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JOURNAL OF
SOCIAL SCIENCE,

CONTAINING THE

PROCEEDINGS OF THE AMERICAN ASSOCIATION.

NUMBER XLI. AUGUST, 1903.

BOSTON PAPERS OF 1903.

PAPERS READ IN THE DEPARTMENTS OF SOCIAL ECONOMY, HEALTH, JURISPRUDENCE, AND EDUCATION.

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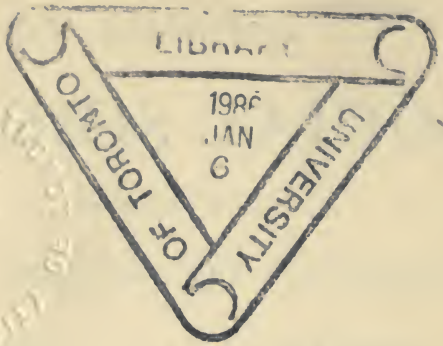

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EDITED BY

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INTRODUCTION.

The papers included in this number of the *Journal of Social Science* comprise all of the Boston addresses of 1903. Owing to the fact that no official stenographer had been engaged for the Boston meeting, the reports of running debates are taken from the columns of the newspapers of that city; but, in most instances, such reports have been revised by the contributors to the discussion.

It may be well in this place to remind essayists once more of the *invariable rule* of the Association, that all papers engaged for the General Meeting are so secured with the understanding that they may be published in the *Journal* if deemed advisable. The members of the Council, however, are not pledged in advance to the publication of any particular paper. If writers choose to publish elsewhere, it must be with the stipulation that their papers may also be printed in the *Journal*, at the option of the Council as to date of publication. Heads of Departments are not solicitous to secure essays which, in general form and substance, have been read elsewhere before presentation at the Association Meeting.

A list of all addresses and papers will be found in the Table of Contents.

MEMBERS OF THE ASSOCIATION.

All officers are *ex-officio* members of the Association, but persons serving on the Department Committees may or may not be members of the Association.

In the list herewith submitted the annual and life members are given alphabetically, and the honorary and corresponding members according to nationality. The only distinction between honorary and corresponding members is that the former reside in the United States, and the latter in foreign countries. It was voted at a meeting of the General Council that the *Journal* of the Association shall not be sent to any member who has not paid his dues for the year in which the convention is held which is reported in the *Journal*. It was subsequently voted at a meeting held at Woodmont, Conn., July 6, 1898, that the General Secretary be permitted to use his discretion in carrying into effect this resolution.

BUSINESS OF 1903.

The American Social Science Association held its Forty-first Annual Meeting at Boston, Mass., beginning Thursday morning, May 14, and closing with the session of Saturday morning, May 16. The proceedings of the convention were carried on in Huntington Hall, which was kindly placed at the disposal of the Association by the Faculty of the Massachusetts Institute of Technology.

The members of the Association were called to order at 10.15 by President Straus, who, after a brief introductory address, appointed a nominating committee, consisting of Hon. Frederic J. Kingsbury, Hon. St. Clair McKelway, and William M. F. Round, Esq. At a subsequent meeting the list of officers as reported was adopted, and their names will be found on a succeeding page of the *Journal.*

In addition to the general business transacted, a regular meeting of the General Council of the Association was held in the parlor of the Brunswick Hotel on Friday afternoon, May 15. The minutes of the previous meeting were read and approved. The report of the Treasurer was received, and ordered on file.

It was then

Voted, That a committee be appointed to make selections from the volumes of Essays published by the American Social Science Association, and with a view to publication in book form, said committee being authorized to draw upon the Treasurer to an amount not to exceed five hundred dollars. The following were named as members of the committee: Hon. Charlton T. Lewis, Hon. Oscar S. Straus, Hon. St. Clair McKelway, and John Graham Brooks, Esq.

Voted, That the Heads of Departments serve as a Committee on Membership.

Voted, That the General Secretary be directed to publish the *Journal* within sixty days from date or as soon thereafter as possible, and that the Treasurer be directed to draw on the investment account to defray the expenses of such publication.

Voted, That the next meeting of the Association be held in Boston in May, at such time and place as the committee may determine.

The Council then adjourned without date.

FREDERICK STANLEY ROOT,
General Secretary.

CONSTITUTION, BY-LAWS,

LIST OF OFFICERS, MEMBERS, ETC.

OF THE

American Social Science Association

AUGUST, 1903.

CONSTITUTION.

I. This society shall be called the AMERICAN SOCIAL SCIENCE ASSOCIATION.

II. Its objects shall be classified in five departments: the first, of Education and Art; the second, of Health; the third, of Trade and Finance; the fourth, of Social Economy; the fifth, of Jurisprudence.

III. It shall be administered by a President, as many Vice-Presidents as may be chosen, a Treasurer, a Secretary, and a Council, charged with general supervision; five Department Committees, established by the Council, charged with the supervision of their respective departments; and such Local Committees as may be established by the Council at different points, to serve as branch associations. *The Council shall consist of President, Treasurer, Secretary, First and Second Vice-Presidents, the Chairman and Secretary of each Department, and ten Directors, with power to fill vacancies and to make their own By-laws.* The President, Vice-Presidents, Treasurer, Chairman, and Secretaries of Departments, and Directors shall be chosen annually by members of the Association, and shall hold office till their successors are chosen. The President, or in his absence a Director, shall be chairman of the Council. The Chairmen of the Local Committees shall be chosen at the pleasure of their respective committees. Whenever a Branch Association shall be organized and recognized as such by the Council, its President shall be *ex officio* one of the Vice-Presidents of the American Association, and, together with the Secretary and Treasurer, shall be entitled to all the privileges of membership in that Association. And, whenever a Local Department shall be organized and recognized as such by the Council, its Chairman shall become *ex officio* a member of the parent Association. The Chairman and Secretary of each Department, with the consent of the President of the Association, may appoint such special Department Committees as they may think best. The General Secretary shall be elected for three years, unless he resigns, or is removed by a two-thirds vote of the members present and voting in a regular meeting of the Council; and out of his compensation he may pay the salary of an Assistant Secretary, who may also be Secretary of one Department.

IV. Elections to membership shall be made by Standing Committee appointed by the Council in such manner as Council may provide. Any person so elected, and on payment of annual membership fee of five dollars, may continue a member by paying annually such further sum as may be fixed at the Annual Meeting of the Association, not exceeding ten dollars. On payment of one hundred dollars any person may become a life member, exempt from assessments. Honorary and corresponding members may be elected and exempted from the payment of assessments.

V. The Council shall have sole power to call and conduct General Meetings, and to publish the Transactions and other documents of the Association. The Department Committee shall have power to call and conduct Department Meetings.

VI. No amendment of this Constitution shall be made, except at an annual meeting, with public notice of the proposed amendment.

BY-LAWS OF THE ASSOCIATION.

[NOTE.— At a meeting of the Council of the Association, held May 9, 1900, at Washington, a committee of three was appointed to revise Constitution and formulate By-laws to be considered and adopted by the Council at the earliest opportunity. That committee consisted of the Hon. S. E. Baldwin, the Hon. Francis Wayland, and the General Secretary.

At a subsequent meeting of the Council of the Association, held in New Haven, Conn., Oct. 12, 1900, this committee reported the following By-laws, which were *unanimously* adopted by the Council. Since the Constitution confers upon the Council power to enact its own By-laws, no further action by the Association is necessary.]

ARTICLE I.

ORDER OF BUSINESS.

The following order of business shall be observed at all meetings of the General Council of the Association: —

(*a*) Reading of minutes.
(*b*) Report of Treasurer.
(*c*) Report of General Secretary.
(*d*) Report of committees.
(*e*) Unfinished business.
(*f*) New business.

ARTICLE II.

QUORUM.

The quorum of the Council at all regular and special meetings shall consist of five members, of whom three shall be of the *ex-officio* members of the Council.

ARTICLE III.

VACANCIES.

SECTION 1. A committee shall be appointed on the first day of the general session of the Association to nominate officers, and such committee shall report upon the morning of the last day of the general session.

SECT. 2. The President may fill any vacancy occurring during the year in any office.

ARTICLE IV.

AMENDMENTS.

The By-laws of the Association may be altered, amended, or repealed by the Council at any meeting by a two-thirds vote of the members present.

ARTICLE V.

TREASURER.

SECTION 1. It shall be the duty of the Treasurer to forward bills for annual dues on the first day of January of each successive year, and to meet all bills for printing, publishing, salaries, etc., on presentation of vouchers approved by President or First Vice-President, and the General Secretary.

SECT. 2. No funds shall be set apart for permanent investment without vote of Council; and all funds so set apart may be invested by the Treasurer at his discretion.

SECT. 3. The President or First Vice-President may draw on the Treasurer in favor of the General Secretary at any time for such sums, not exceeding one hundred dollars at any one time, as the President or First Vice-President may deem necessary to meet any proper expenses incident to the management of the Association or the proceedings of the Committee on Elections to Membership.

ARTICLE VI.

PRINTING.

SECTION 1. The selection of papers for publication in the *Journal* shall be left with the President and General Secretary, the latter serving also as editor of the *Journal*, and with the Heads of Departments. The Chairman of each Department will indicate to the General Secretary what papers, in his judgment, are available for publication in the report of proceedings.

SECT. 2. It shall be the duty of the General Secretary to print and distribute such information concerning the objects and purposes of the Association as may be useful in securing new members.

SECT. 3. It shall be the duty of the General Secretary to publish and distribute a cloth-bound copy of the annual *Journal* of the Association to each member in accordance with provisions under article referring to *Memberships*. Each essayist will be entitled to twenty-five reprints of his paper at the expense of the Association, on condition that his application is placed on file prior to the printing of his paper.

SECT. 4. If, in the judgment of the Treasurer and General Secretary, the funds of the Association will not justify publication in cloth, the current edition of the *Journal* shall appear in paper. The uniform date of publication shall be within six months of the Annual Meeting of the Association. Distribution of the *Journal* shall be effected as soon thereafter as possible.

ARTICLE VII.

MEMBERSHIPS.

SECTION 1. Elections to membership shall be made in accordance with provisions contained in Article IV. of the Constitution.

SECT. 2. After initial payment of assessment fee, all members in arrearages for the next following fiscal year of the Association shall not be entitled to the *Journal*. Failure to remit annual dues for two consecutive years shall result

in loss of membership in the Association. The General Secretary, however, may exercise his discretion as to the application of this rule in given cases.

ARTICLE VIII.

SALARIES.

The General Secretary shall be paid the amount of his salary in quarterly instalments upon the first days of October, January, April, and July, respectively; and he shall draw upon the Treasurer at his discretion such sums as may be allotted by vote of Council for clerical assistance.

OFFICERS OF THE ASSOCIATION.

1903-1904.

President, JOHN GRAHAM BROOKS, Cambridge, Mass.
Honorary President, FRANK B. SANBORN, Concord, Mass.
First Vice-President, Hon. OSCAR S. STRAUS, LL.D., New York City.
Second Vice-President, Hon. FREDERICK J. KINGSBURY, Waterbury, Conn.

DIRECTORS.

President CHARLES W. ELIOT, LL.D., Cambridge, Mass.
W. A. GILES, Esq., Chicago, Ill.
EDWARD T. POTTER, Newport, R.I.
EUGENE SMITH, Esq., New York City.
BOOKER T. WASHINGTON, Esq., Tuskegee, Ala.
SEYMOUR DEXTER, Esq., Elmira, N.Y.
Hon. ST. CLAIR MCKELWAY, Brooklyn, N.Y.
WM. M. F. ROUND, Esq., Boston, Mass.
Hon. C. S. HAMLIN, Boston, Mass.
Col. JACOB L. GREENE, Hartford, Conn.

Vice-Presidents.

Hon. S. E. BALDWIN, LL.D., New Haven, Conn.
Hon. FRANCIS WAYLAND, LL.D., New Haven, Conn.
Prest. DANIEL C. GILMAN, LL.D., Baltimore, Md.
Hon. WILLIAM T. HARRIS, LL.D., Washington, D.C.
Hon. FRANK B. SANBORN, Concord, Mass.
Hon. CARROLL D. WRIGHT, LL.D., Washington, D.C.
Prest. J. B. ANGELL, LL.D., Ann Arbor, Mich.
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Hon. JOHN EATON, Washington, D.C.
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Hon. JOHN W. FOSTER, LL.D., Washington, D.C.
LUCY HALL-BROWNE, M.D., Brooklyn, N.Y.
Mrs. CAROLINE H. DALL, Washington, D.C.
GRACE PECKHAM MURRAY, M.D., New York.
H. HOLBROOK CURTIS, M.D., New York.
Rev. F. G. PEABODY, D.D., Cambridge, Mass.
Prof. GEORGE L. RAYMOND, L.H.D., Princeton, N.J.
Mrs. VIRGINIA B. MCKELWAY, Brooklyn, N.Y.
C. A. WOODS, Marion, S.C.
Rev. JOSEPH ANDERSON, D.D., Waterbury, Conn.

General Secretary, FREDERICK STANLEY ROOT, M.A., 129 E. 15th St., New York.

Treasurer, W. C. LEGENDRE, 59 Wall St., New York.

Department Officers.

I. *Education and Art.*—Mr. S. T. DUTTON, New York City, *Chairman*; Mr. JAMES P. MUNROE, Boston, Mass., *Secretary*.

II. *Health.*—SAMUEL H. DURGIN, M.D., Boston, Mass., *Chairman*; Dr. HIBBERT W. HILL, Boston, Mass., *Secretary*.

III. *Social Economy.*—JOHN GRAHAM BROOKS, Cambridge, Mass., *Chairman*; HORACE G. WADLIN, Boston, Mass., *Secretary*.

IV. *Jurisprudence.*—Hon. CHARLES BULKLEY HUBBELL, New York City, *Chairman*; Prof. ISAAC FRANKLIN RUSSELL, New York City, *Secretary*.

LIFE MEMBERS.

Extract from Constitution: "On payment of one hundred dollars any person may become a Life Member, exempt from assessments."

Angell, Mr. George T., 19 Milk St., Boston, Mass.
Baldwin, Hon. S. E., LL.D., New Haven, Conn.
Barnard, Mr. James M., 140 Beacon St., Boston, Mass.
Barnard, Mrs. James M., 140 Beacon St., Boston, Mass.
Blatchford, Mr. J. S., Boston, Mass.
Bradford, Mr. Gamaliel, 502 Beacon St., Boston, Mass.
*Cole, Mr. W. A., New York City.
*Dike, Mr. Henry M., New York City.
Dodge, Mr. Charles C., 33 Broadway, New York City.
Dodge, William E., Jr., 99 John St., New York City.
Eliot, Mrs. Samuel, Boston, Mass.
Endicott, William, Jr., Boston, Mass.
*Farwell, Mrs. A. G., Boston, Mass.
Hermann, Mrs. H., 59 W. 56th St., New York City.
Hewitt, Hon. Abram S., 9 Lexington Ave., New York City.
Hoyt, Hon. J. W., The "Victoria," Washington, D.C.
James, Hon. D. Willis, 45 Wall St., New York City.
*Lawson, Rev. Albert G., Camden, N.J.
Letchworth, Mr. W. P., Portageville, N.Y.
Libbey, Mr. Jonas M., New York City.
Sanborn, Hon. Frank B., Concord, Mass.
Sanborn, Mrs. Louisa L., Concord, Mass.
Smith, Prof. Goldwin, LL.D., Toronto, Canada.
Stokes, Mr. Anson Phelps, 45 Cedar St., New York City.
Stokes, Mr. I. N. Phelps, 47 Cedar St., New York City.
Stokes, Mr. Thomas, 47 Cedar St., New York City.
Straus, Hon. Oscar S., 42 Warren St., New York City.
Villard, Mrs. Henry, 145 W. 38th St., New York City.
Ward, Mr. J. Q. A., 119 W. 52d St., New York City.
Ware, Mr. William R., 130 E. 27th St., New York City.
Wayland, Prof. Francis, LL.D., New Haven, Conn.
White, Hon. Andrew Dickson, LL.D., Berlin, Germany.
Wolcott, Miss Ella L., Elmira, N.Y.
Young, Mr. J. Edward, 130 William St., New York City.

[Names marked with (*) cannot be found by post-office officials.]

HONORARY AND CORRESPONDING MEMBERS.

In America.

Prof. J. Irving Manatt, Providence, R.I.
Major-gen. O. O. Howard, 150 Nassau St., New York City.
Edmund A. Meredith, Esq., care The Toronto Income Trust Co., Yonge St., Toronto, Can.
Hon. Domingo F. Sarmiento, Buenos Ayres.

In Great Britain and Ireland.

Sir Walter Crofton, The Close, Winchester.
Lord Radstock, London.
Miss Frances Power Cobbe, Hengorst, Dolgelly, Wales.
Henry Dunning McLeod, Esq., Oxford and Cambridge Club. London.
Alfred Field, Esq., Birmingham.
Thomas H. Barker, Esq., Manchester.
Henry W. Ackland, M.D., F.R.S., Oxford.
Miss Louisa Innes Lundsden, Glenbogie, Rhynie, Scotland.
Herbert Spencer, Esq., London.
Miss J. Frances Dove, Wycombe Abbey, Bucks, England.
Lord Hobhouse, 15 Bruton Street, London.
Prof. James Bryce, M.P., London.
Geoffrey Drage, Esq., London.
Moncure D. Conway, Esq., London.

In France.

M. August Laugel, 12 Rue de la d'Anjou, Paris.
M. Émile Cacheux, 25 Quai St., Michel, Paris.
*M. Émile Trelat, Paris.
M. F. Buisson, Bd. 163 Montparnasse, Paris.
M. Émil Levasseur, 24 Rue Monsieur le Prince, Paris.
M. Arthur Raffalovich, 19 Avenue Hoche, Paris.
M. Pierre Claudio Jannet, 22 Rue Oudinot, Paris.

In Italy.

Signor Martino Beltrani-Scalia, Rome.
Prof. C. F. Gabba, Pisa.
*Prof. Alberto de Errea, Cavaliere della Corna d' Italia, Venice.

In Belgium.

*M. P. Buls, Brussels.
M. Van de Rest, Brussels.

[The names on this list marked with a (*) are those of persons who cannot be found by post-office officials.]

LIST OF ANNUAL MEMBERS, 1903.

[NOTE.— With reference to this enrollment some explanations are essential, and they are as follows:—

The "National Institute of Arts and Letters," organized under the auspices of the American Social Science Association, but now an independent body, still retains a certain connection with the Association in the form of Associate Memberships. The following clauses from vote passed at the Saratoga meeting of the Association define the existing status:—

Voted, That the members of the Institute be *ipso facto* associate members of the Association in return for the courtesy of the Institute in making members of the Association associate members of the Institute.

In the list subjoined, such associate members are marked with a *star*. In the matter of academic titles, such only are given as are known. Members are earnestly solicited to communicate with the editor at once respecting academic titles, and also to correct any errors which may be found upon the roll. All resignations should also be promptly reported to the permanent address of the General Secretary, 129 E. 15th St., New York City.]

*Abbey, Edwin A., Fairford, England.
Abrahams, A., 800 St. Marks Ave., Brooklyn.
Adams, B., 23 Court St., Boston.
Adams, Elbridge L., 911 Wilder Bldg., Rochester, N.Y.
*Adams, Henry, Washington, D.C.
*Adams, Herbert, LL.D., Johns Hopkins University, Baltimore, Md.
Adams, Oscar Fay, 41 Marlboro St., Boston.
Addam, Miss Jane, Hull House, Chicago.
Ade, George, the *Record*, Chicago.
Agar, John E., 31 Nassau St., New York.
Aiken, W. M., St. James Building, Broadway, New York City.
*Alden, Henry M., care of Harper & Brothers, New York.
Aldrich, Charles F., Home Insurance Building, Chicago.
Aldrich, Nelson W., Providence, R.I.
*Aldrich, Thomas Bailey, Boston, Mass.
Aldridge, George W., Rochester, N.Y.
*Alexander, John W., 120 Broadway, New York City.
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Ames, James Barr, Cambridge, Mass.
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Anderson, Rev. Joseph, D.D., Waterbury, Conn.
Anderson, Warren E., Pensacola, Fla.
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Andrews, Charles, Syracuse, N.Y.
Andrews, Hon. Charles B., LL.D., Litchfield, Conn.
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Anthony, Prof. Wm. A., Cooper Union, New York.
Archer, Frederick, Carnegie Institute, Pittsburg, Pa.

Ashley, Prof. Clarence D., LL.D., N.Y. Un. Law School, New York.
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Atwood, J. M., 159 Meigs St., Rochester, N.Y.
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Austen, Peter T., 218 St. Johns Pl., Brooklyn.
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Avery, Edward H., Auburn, N.Y.
Ayer, Benjamin F., 99 Pine St., Chicago.
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Baldwin, William H., Jr., 32 Nassau St., New York City.
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Band, A., Washington, D.C.
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Benedict, Frank Lee, 1514 H St., N.W., Washington, D.C.
*Benson, Frank W., Salem, N.H.
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Bigger, L. A., Hutchinson, Kansas.
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*Bird, Arthur, Berlin, Germany.
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Bjorksten, Meodove, 95 Carnegie Hall, New York City.
Blaikie, William, 206 Broadway, New York.
Blair, James L., Union Trust Building, St. Louis, Mo.
*Blashfield, Edwin H., 48 W. 59th St., New York.
Blenner, Carle J., 58 W. 57th St., New York.
Blount, Henry F., The Oakes, Washington, D.C.
*Blum, Robert F., 90 Grove St., New York.
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Blumer, G. Alder, M.D., Butler Hospital, Providence, R.I.

Boardman, D. L., Troy, N.Y.
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Bonaparte, Hon. Charles J., Baltimore, Md.
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Borland, Wilfred P., Burley, Wash.
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Bowker, R. R., 274 Lafayette Ave., Brooklyn.
Bowles, Samuel, Springfield, Mass.
Boyde, David R., Norman, Okla.
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I. DEPARTMENT OF SOCIAL ECONOMY.

1. SOME RESPONSIBILITIES OF CAPITALISTIC ORGANIZATIONS.

BY GEORGE W. ANDERSON, ESQ., OF THE SUFFOLK BAR.

[Read Thursday morning, May 14.]

In considering some of the responsibilities of capitalistic organizations, it is not for a moment to be overlooked that the career of the labor organizations has not been marked by any such love of wisdom, justice, and fair dealing as to evoke our moral enthusiasm. Their attitude in arbitrarily and unjustly excluding from opportunity to labor all who will not become members of their organizations and submit to their regulations; in tyrannically boycotting any work undertaken to be carried on by non-union or what they call "unfair labor"; in limiting the opportunities for apprentices to learn the trades, and thus checking that wholesome industrial development which finds its basis in the proper training of youth; in resorting to brickbats, bludgeons, and even dynamite, at times of strikes, in order to prevent non-union labor from taking the place of strikers; in opposing the introduction of, and even destroying, labor-saving machinery; and, in too many cases, of deliberately breaking the contracts which the organizations have made for a scale of wages,— are but illustrations of the general lack of legal and ethical responsibility which has for many years marked the contest they have carried on.

Nor have the labor organizations any moral standing to denounce trusts, for their movement is as distinctly a combination or trust as is the capitalistic movement. The only ground upon which the organizers of labor may denounce capital, simply for organizing, is that the labor movement is subsequent in time and an absolutely necessary result of the prior organization of capital. The two movements are alike

in motive and object. If organization is legitimate for capital, it is legitimate for labor: if it is legitimate for labor, it is legitimate for capital. The point is that neither has any standing for condemning the other simply because of the fact of organization.

In the contest, as it is now carried on, between these two opposing forces, often with a violence which gives it the aspect of a real warfare, it is obvious that there are at least two main desiderata:—

First, that the parties to the contest should become so nearly equal in real and apparent power that each may come to a respect for the other (for respect is closely akin to fear in the last analysis), to the end that an equilibrium approximating justice may result. As human nature now is, and is likely to be for some time to come, the strong are seldom just to the weak. It is only the reasonably strong that get approximate justice. The organization of labor is an absolute condition precedent, under present conditions, to any sound social and industrial progress. To oppose that organization, to attempt to prevent it by legislation, or to denounce it in terms recently used at the Manufacturers' Association at New Orleans, is both futile and foolish. No greater disaster could occur to this country to-day than the disorganization of labor, —the destruction of the labor organizations. John Mitchell is one of the great conservative forces. George F. Baer is the real opponent of order and progress.

The second desideratum is that there should be an increased respect for law and for justice on the part of both Labor and Capital, that our civilization should not be merely superficial, and our justice a sort of unstable equilibrium between violent, contending forces, but that both Capital and Labor should increasingly recognize the obligation incumbent upon every human being to do his fair share of the world's work, and to receive only his fair share of the good things of this world. Until our political, social, and industrial organization is founded in ethical conceptions approximately sound and controlling, our condition will be that of a limited chaos: we may have a despotism of capital tempered by assassination, actual or metaphorical, on the part of labor; or we may have a despotism of labor organizations tempered by capitalistic bribery

of legislatures, city governments, officials, and perhaps even of the courts.

The final appeal must be to justice. This is a moral universe. There can be no sound and conservative progress except along the line of just laws justly enforced.

Capital has in this contest an infinitely greater reason for desiring law to be respected and obeyed than has Labor. This is so because to-day Capital founds its enormous power directly upon a basis of law,—the law which permits incorporation, and incorporation with practically unlimited capitalization. Repeal every corporation act of this country, or even require every corporation organized to pay in its entire capital stock in cash or its equivalent in tangible property, as does our present Massachusetts corporation law, and you take from Capital three-fourths of its present power. But law, statute or constitutional, finds its ultimate basis in the ballot box,—in the choice, supposedly free, of the great mass of those exploited by and through the law they themselves create. In other words, Labor in this country has within its power to destroy Capital. Property exists at the sufferance of the ballot-box. It behooves Capital to be careful how it teaches injustice to those who control the ballot-box.

In weighing the power of the two contending forces, nothing is more foolish and misleading, even when not used as an attempt to deceive, than a comparison of wages with interest and dividend rates, for the purpose of determining the share received by Capital and the share received by Labor in the joint product of both. Interest and dividend rates are hardly indicative of the power really exercised to-day by Capital in the industrial, social, and political world. In fact, as Capital becomes more absolutely dominant and appropriates to itself under our present system a larger part of our natural resources and of the joint product of Labor and Capital based upon those natural resources, safe investment for small amounts of capital becomes more difficult, and interest rates accordingly drop. The tearful widow and orphan, held up in legislatures and courts as getting so small a return upon their small accumulations, receive their poor return, not because a larger part is going in wages, but because the organizers of monopolies are so using their capital in the manipulation

and control of business as to take to themselves the larger part of the product. Capital is to-day dynamic, not static. Its real power is not to be measured by interest and dividend rates, but by its use in the control of industry, in the manipulation of stocks, in which is vested under our system of law a potency mysterious and unfathomable to the many, and in the control of legislation.

It does not at all follow that because Capital is increasing its now enormous power by and through our system of law, as it now is, that the remedy is to be found in any such legislation as the Sherman Act.

Of course, we all know that this law was never enacted for the purpose of being enforced. It was on the statute books more than a dozen years, practically unenforced, through a period during which we had both Democratic and Republican administrations, both perhaps equally under the domination of capitalistic influence. The recent decision under this act has shown that it may be a political weapon of enormous potency; and, under the last amendment by Congress, it is very clear that there is now vested in the hands of the politicians of the dominant party a means of obtaining campaign funds such as was never dreamed of before.

It is a law far more likely to be abused than used, affording infinite opportunity for blackmail, and offering no real remedy for the evils from which we are really suffering. It may avail for political purposes and to injure business. It will not avail to reinstate the reign of competition. If executed at all, its execution will be spasmodic, unequal, unjust, like the execution of the prohibitory liquor law in most States. The blackmail of the Tammany police will sink into insignificance beside the blackmail that will be levied if the Sherman Act and other similar legislation are put into real operation.

No law or movement directed against the organization of Capital, simply because it is an organization, can possibly succeed. The industrial trend toward organization is as certain and inevitable as the trend of the waters toward the great river, and thence into the ocean. No dam can stem the current.

Let us briefly consider some of the aspects of monopoly as we now have it.

Monopolies in Natural Resources.

Under our law permitting the private ownership, not only of the surface of the land, but of all minerals and metals beneath the surface, the coal and iron supply of the country will soon be entirely under monopoly control. The implied claim of the United States Steel Company, when it offers its stock and bonds for sale, falls little short of asking the public to buy those securities on the faith of that corporation's having so nearly a control over the iron supply of the country as to enable it to place any value it pleases on its holdings of land and mineral rights. Even if this implied claim is now somewhat of an exaggeration, the nature of the business and the enormous power exercised by the interests that have created that enterprise are sufficient to justify the statement that there now exists the potentiality of such monopoly.

The condition of the ownership and control of the anthracite coal supply is just cause for revolutionary sentiments and activities. 96.29 per cent. of the anthracite deposits are owned or controlled by the transportation companies engaged in handling this coal. (See Report Anthracite Coal Strike Commission, 1903, p. 22.) Here is one of nature's great gifts to mankind, upon the use of which the health and comfort of most of us are dependent, cabined, cribbed, cornered, and confined, so that the few may, and do, assess upon the many a tax as groundless in justice and fair dealing as the exactions of the Turkish tax-farmer, to whose tender mercies the people of a whole province is turned over, with legal process to take from them what he will. And this capitalistic organization, not content with availing itself of the absurd and unjust law that has permitted such a monopoly to any corporation or combination of corporations—except railroad companies—has, in the teeth of express constitutional and statutory provisions forbidding it, been effected by our public highway corporations. What a lesson in lawlessness, in practical anarchy, in greedy tyranny! The papers of this May 9, 1903, contain a statement to the effect that a labor organization in Haverhill has "prohibited manufacturers from teaching new men to turn shoes," in order to maintain the union's corner of this kind of labor. Nothing could be more anti-social, more tyran-

nical, more unjustifiable. Has capital any *locus standi* in justice to complain of this tyranny?

The Transportation Monopoly.

Comparatively few people now deny that competition ought never to have been accepted as a means of regulating railroad rates. It is now generally recognized that the railroad business is, and in its nature ought to be, a regulated monopoly. But the vice of combination among railroads is found, not in the fact that it is a combination, but in that the combination is always a stock-watering enterprise, having as its main object not the elimination of the wastes of competition, but the creation and sale of stocks and bonds representing purely the power of charging extortionate rates. The "mergers" are bad because in the process of merging the whole becomes greater than the sum of all the parts, and because the public are called upon to pay for this anti-axiomatic increase. The extent to which this form of exploitation has gone is incredible until one tries to collate and analyze the figures.

Every one of us is daily taxed for the benefit of those promoters of railroad combinations as truly as we are taxed for police protection or for schools.

Infinitely worse than the stock-watering mergers is the inequality of rates,—the rebate system,—through which the Standard Oil Company established its monopoly. That all citizens of a free country are not entitled to equal use of the public highways is a proposition too absurd to discuss. That charitable endowments in large numbers are now being established from the wealth created by this sort of exploitation is but another evidence of our infinite capacity for hypocrisy. Robin Hood was the great exemplar of our modern founders of charitable endowments.

Can Capital claim that in its use of its control of our public highway corporations it has met its moral responsibilities, and that Labor cannot justly use its voting power in favor of State ownership upon the basis of the cost of reduplication?

The evils of State ownership, that we know not of, will not much longer terrorize us, unless saner counsels prevail among our railroad manipulators.

Trusts.

Passing from monopolies in gifts of nature and in public service corporations, we come to what are popularly known as "Trusts."

The main objection to these combinations is found, not in the fact that they are combinations, but in their enormous over-capitalization and in the use that is made of that over-capitalization. Generally, three things besides property and good will of the business are capitalized.

(*a*) The saving of the waste of competition, such as less travelling salesmen, less for advertising, better regulation of credits, conformation of supply to demand, etc. This is a real economy; and it may be argued, at least plausibly, that the capitalists who bring about a combination between various competing plants, thus making these savings possible, without either raising prices to the consumer or lowering the wages of the employees, are entitled, as a reward for their foresight and enterprise, to capitalize in the form of corporations and to sell to the investing public, securities, interest and dividends upon which may reasonably be expected to be earned and paid by means of these savings. It is not at all clear that the promoters of these savings are entitled to the entire benefit derived therefrom, and that in a proper organization of society the employed and consuming classes should not share to some appreciable degree in the savings thus made possible. But, even if this is so, it constitutes the least of the valid objections to the modern combination.

(*b*) Besides the saving of these wastes of competition, there are certain economic benefits derived from the fact of combination which are capitalized, and perhaps legitimately capitalized, such as: ability to buy in large quantities, and therefore more cheaply; more perfect organization and a saving in the salaries of higher officials; ability to handle large orders, to sell in large quantities, and therefore at a smaller percentage of profit; the saving of transportation by shipping from the plant nearest in location to the consumer; the utilization of what in smaller enterprises are waste products; the opportunity for experimentation which comes

from a control of different plants in different localities; the use of abundant capital; a specialization of labor. These also are real economies, advantageous to the public as a whole, provided the results are properly distributed.

To illustrate by figures. Suppose you have a lot of steel manufacturing plants or leather manufacturing plants, situated in different parts of the country, the fair aggregate cost of which is $100,000,000, earning from 5 per cent. to 10 per cent. on the capital involved, while operating as separate plants. It may well be that, operated as a single combination, the same plants, without either raising prices or lowering wages, may produce and distribute an equal amount of product, and have as net earnings $5,000,000 more per annum than under the old competitive system. This annual earning will capitalize for at least $50,000,000, which may be plausibly argued to be a legitimate reward to those whose enterprise and business grasp have made the combination possible.

(*c*) But capitalists have not stopped in their career of capitalizing the benefits of combination and in their use of corporate franchises, within the above designated limits. They have gone much further, and have capitalized supposed increased profits based not upon any economy of production, but upon a supposed monopoly control of the market, which means always one of two things:—

(1) An actual, if not nominal, reduction of wages, so that the employed class are really getting a less actual share of the product; or

(2) An increase in price to the consumer.

This is the capitalization of monopoly,—the capitalization of the power of extortion. It is the elimination of the check in behalf of fair prices which we have always been taught to believe found its main if not only source in competition. Hundreds of millions of stocks and bonds have been issued by corporations during the last seven years representing absolutely nothing but this power of extortion.

In connection with the flotation of this enormous mass of securities, it is interesting to note a few aspects of the currency question.

The Democratic campaign of 1896 in behalf of free silver was intended and understood to be a distinct anti-capitalistic

campaign. The Democratic programme involved three intelligible propositions:—

(*a*) That a shrinking currency and dropping prices gave the creditor an unjust advantage over the debtor class, and tended to concentrate wealth in the hands of the few; or, conversely, an increasing currency would quicken business, relieve debtors and mortgagors, and tend toward a more equitable distribution of wealth.

(*b*) It was asserted that it was impracticable to provide an elastic currency, increasing as business demands increase, upon the gold basis alone; that there was not gold enough to provide basis for a sufficient currency.

(*c*) That bimetallism was therefore the only method by which a further heaping up of wealth in the hands of the few could be prevented.

To these propositions the Republicans, besides putting in a general denial, answered,—

1. That there was no stringency of currency, and that an increase in the amount of currency would have no tendency to quicken business or to bring what we ordinarily call prosperity; that the per capita circulation of currency was adequate; and

2. That any attempt to inflate the currency, except by an increase in the amount of gold, would certainly bring distress and destruction.

The Republicans won. With true Machiavellian statesmanship they proceeded by every known device, except bimetallism, to increase the circulating medium until it is now more than 35 per cent. per capita greater than it was in 1896.

The results are:—

(*a*) As prophesied by the Democrats, business has increased enormously in volume; "prosperity"—at least superficial prosperity—has come; the debtor—mortgagor—class has been greatly relieved, especially throughout the agricultural districts, where they have been assisted also by a series of remarkable crops. But

(*b*) The employed classes, except that more of them are employed, since 1896 have seen their wages actually reduced in purchasing power.

(*c*) Instead of this increased prosperity's resulting in a more equitable division of the joint product, the increase in volume of the currency has, by the use made of it by the trusts, worked out a great additional advantage to the capitalistic classes who in 1896 so violently contended that we wanted no increase in circulating medium.

As results, the cost of living is now greater than at any time since the years just succeeding the Civil War; actual wages are lower than for many years; the wage-earning class are more dissatisfied probably than ever before; the capitalists, who denounced bimetallism as the worst sort of inflation heresy, are trying to relieve the overloaded Wall Street stomach of its undigested *in*securities by providing a new currency inflation measure along the lines of the wildcat banking enterprises of the '40's. Wall Street, which in 1896 said the then supply of gold was adequate for all currency purposes, now wants a currency inflation in comparison with which free silver would be as nothing.

There are many other incidental results of this development of trusts which cannot be overlooked.

By this means the actual control of business has been taken from the trained business men, who have grown up in these various industries, and put into the hands of promoters and stock market manipulators. When you have a corporation, say, with a capitalization of $100,000,000, you find that capitalization represented by:

(*a*) Probably $50,000,000 of bonds bearing a reasonable rate of interest, and sold to the investing public, none of whom have any voice or control in the management of the business itself;

(*b*) By $10,000,000 or $20,000,000 of preferred stock, which sometimes does, and sometimes does not, share by vote in the control of the business;

(*c*) By a block of common stock representing really nothing but "water," or "capitalized monopoly," the football of the market, kept originally in the hands of the promoters, bought in or controlled in sufficient quantities before the annual elections, so that the boards of directors are selected not by the real parties in interest, but by the manipulators, who thus get entire control of the book-keeping, and may

put out reports bulling or bearing the stock according to their own desires. They find their real interest and profit, not in dividends which may possibly be earned upon their stock, but in buying and selling it, or otherwise manipulating it for new combinations. The result is that the real control of business has become enormously centralized into the hands of persons who know little or nothing about the actual business carried on, who have no personal contact with or interest in either the vast majority of those employed in the industry or those whose investments constitute the real working capital of the industry. This control is worse than that of non-resident landlords. It is selfish, heartless, greedy, inhuman; and this not because the persons exercising this enormous power are at bottom really worse than other people, but because the system which they have thus constituted gives free reign to the worst elements in human nature, with none of the checks which under ordinary circumstances soften and civilize and humanize most human relations.

It cannot be expected that the employed class will receive or expect fair, just, and human treatment from an employing class so entirely cut loose from every bond of human sympathy, using their power as inevitably such power will be used under such conditions. Capital is setting no example of fair and just dealing with labor under these new conditions. Formerly, even when the great majority of employers were brought into close and individual contact with their employees, we find that nearly every movement in behalf of ameliorating the condition of labor met the violent opposition of the employers. Child labor was justified; factory inspection bitterly fought; legal limitation upon the hours of labor contested to the last ditch; employers' liability acts forced through the legislature only by the terror of the labor vote; labor organizations—"collective bargaining"—recognized only after long and bitter struggles, and then only occasionally and in the least possible degree. With the lessons of such a history impressed upon them, what are the laboring classes to expect from the employer of the future, when that employer lives not even in a mansion upon the hill overlooking the factory, with his office in the factory, but lives in New York, Chicago, Philadelphia, or Boston, and has his office

"down town" and exercises his activity in the stock market? If, under these circumstances, the employee is not too dull to merit title to American citizenship, he will rapidly and completely learn the lesson of organization and the power that comes from organization; and he will use that power, found mainly at the ballot-box, perhaps with no more limitations found in conscience or fair dealing than have been used against him by the power of capital.

The "community of interest idea" has been defined as "the right to do what one wills with one's own." The words "one's *own*" depend upon the law which makes possible the existence of private property. It is very obvious that, if the laboring classes combine, and choose to use as a combination, the ballot-box, they may radically change, or even destroy, property rights, not only as they are, but as they ought to be.

If labor follows the example set, and does what it will with "its own,"—the ballot-box,—it will be a sorry day for the originator of the "community of interest" idea.

For the past generation the legislation of this country has been mainly controlled by capital. Our national tax laws have been dictated by capital, not for the purpose of raising revenue, but for the purpose of limiting or destroying competition, and for giving, generally in lieu of contributions to the campaign funds of one or both of the chief political parties, private privileges and emoluments as a result of public law. This has not conduced to respect for law or for the process of law-making.

In not a few of our States the sale of legislation is a regular business carried on by the bosses of the dominant party, as well established and recognized, and far more lucrative, than the practice of law or medicine. As an illustration, it came within a few weeks to my knowledge that in one New England State a non-resident desired legislation to put a street through a part of his property, so that it might be profitably developed. To obtain such legislation, he applied, not to the government of the city in which his land lies, not to the legislature, on the ground that the proposed law was a proper public measure; but he had the desired bill drawn by his lawyer, paid $3,000 to the boss of the dominant party

in that State, and the bill became law. The corruption of the State legislatures in many of our States is so notorious and wide-spread that no detailed statement of it is necessary to bring the facts before any body of intelligent Americans. In justice, however, a *caveat* should be filed to the effect that it is probably not true that the majority of legislators in the States in which this corruption is most rife do themselves receive actual bribes for their votes. They are mostly well-meaning and, within limitations, entirely honest men. Their votes are controlled, however, by party machinery; and the party machinery is in turn controlled by capitalists and promoters, who make campaign contributions or pay into the pockets of the party bosses money as compensation for the control of the party votes by these bosses. It hardly need be observed that the beginning of this sort of corruption was found in the greed of capital in obtaining monopoly of State franchises and other legislation, by means of which they desired to exploit the public.

Of course, this system has resulted not merely in unjust law, making such exploitation possible, not merely in general loss of respect for law; but it has also degraded our legislators by making, in many instances, the holding of public office not an honor, but a disgrace, and by inducing "strikers," blackmailers, and corruptionists generally to go into politics for the purpose not only of receiving bribes as compensation for their votes for improper legislation, but of demanding pay for refraining from obstructing just and proper legislation. A corrupt gas or railroad fight in this year's legislature will inevitably produce in next year's legislature a crop of dirty, blackmailing legislators waiting to be hired to vote even for an appropriation to pay the honest debts of the Commonwealth. The ordinary, honest citizen, who has a moderate desire to render a public service and to enjoy a public honor, has no chance of political preferment in the wild and filthy scramble which results when political office becomes a common and notorious means of private gain. If it be a fact that our city governments and many of our State governments are in large part made up of *un*representative men, that fact finds its origin in the greedy and conscienceless attempts of capitalists to obtain for themselves unjust

laws, and their willingness to share some part of the profits they expect to make by means of those laws with the legislators and officials whose abuse of power gives them their opportunity. While such a state of affairs exists, it is useless to discuss theoretical anarchy: this is practical anarchy; and this is the example that Capital has set to Labor. It is one of the present responsibilities of capitalistic organizations to undo the evil they have wrought,—to teach the voters that the powers of the ballot-box and of the legislative hall are to be held and exercised as a sacred trust for the benefit of the community as a whole, and that any other use is but a form of social and political suicide; that the real "community of interest" idea is *not* that "one may do what one wills with" what one calls "one's own," but that "one may do what one ought justly and fairly to do with the property and powers which have come to him as a result of the fact that he has inherited an interest in the 'community' of effort and of law," without which "community" his own acquisitions and achievements would avail little or nothing.

The social and political unrest is intense. If Capital fails to recognize the necessity of just laws, respected and obeyed, it may expect little mercy at the hands of its adversaries when they discover their real power. This responsibility cannot be met by the founding of hospitals, libraries, and universities with a select and pet set of professors, who shall "crook the pregnant hinges of the knee that thrift may follow" their intellectual fawning; it cannot be met even by a control of the Associated Press despatches and of a large share of the newspapers of the country; it cannot be met by wild and lurid denunciations of the obvious abuses and evils of labor organizations as they seek to perfect their organization and feel their way toward a realization of their own power, nor by harping on the old cant phrases concerning "socialism," "interference with the rights of private property," and "destruction of vested interests." It can only be met by a fair and candid discussion which shall show where right and justice really lie, and by an open and expressed desire to make our system of law as sensitive and responsible as possible to the actual rights of all the persons subject to the mandates of that law.

Except among the farmers, competition has either been eliminated or is in rapid process of elimination. Competition was the foundation of our old political economy. Its failure as a regulating force is little less than complete. The foundation principles of the old political economy have crumbled away until the structure built upon them is as grotesque and unreal as the Miltonic conception of the universe.

Intellectually, at least, we are in chaos. We know not whither we are tending. We cannot see what in the future is to be the sufficient and operative check upon human greed. But this makes all the clearer the necessity of proceeding conservatively and tentatively, of bringing the ethical test to bear upon every relation of life.

The persons who are in control of the great capitalistic organizations of the country to-day are trustees of an enormous power, industrial, political, and social. If they fail to exercise that power soberly, wisely, conservatively, if they drive with a drunken hand, as not a few of them are now doing, the results are unpleasant to contemplate.

It is no part of my present undertaking to indulge in prophecy or to discuss socialism. If socialism be really something more than an epithet, it means the proposition that the business of the country should be put under the management of public officials, responsible, nominally at least, to organic society for the faithful performance of their duties. As business now is, or is rapidly becoming, it is managed by sets of corporation officials, responsible only to cliques of stock manipulators, who control the annual elections of boards of directors. The use which some of these officials are making of their power is doing more to promote socialism than all the advocacy of the theorists. If socialism comes, the main responsibility for its coming will rest upon the capitalistic organizations.

2. THE INCORPORATION OF TRADES-UNIONS.

BY LOUIS D. BRANDEIS, OF THE SUFFOLK BAR.

[Abstract of address delivered Thursday morning, May 14.]

Most Americans sympathize fully with the efforts of workingmen to better their condition. Labor unions have contributed greatly to this end. They have been largely instrumental in securing reasonable hours of labor and proper conditions of work, in raising materially the scale of wages, and in protecting women and children from industrial oppression. In doing this, they have contributed also to the general welfare of the community, since the conditions under which so large a proportion of our fellow-citizens live and work must determine in great measure the future of our country for good or for evil.

The struggle of workingmen to attain these ends has been attended at times by intolerable acts of violence, by intimidation, by oppression, or by other forms of lawlessness. Such conduct the American people, with their inborn respect for law, their desire for fair play, and their common sense, strongly resent. By such conduct the sympathy of the public is quickly forfeited; and it has been the general experience in this country, in respect at least to the great strikes, that success or failure depended mainly upon whether public opinion was with or against the strikers.

The growth and success of labor unions, therefore, as well as their usefulness to the community at large, would be much advanced by any measures which tend to make them more deliberate, less arbitrary, and more patient with the trammels of a civilized community. The employer and the community also require this protection. Incorporation would serve in some measure to the attainment of this end.

When, in the course of a strike, illegal acts are committed, such as acts of violence or of undue oppression, the individual committing the wrong is, of course, legally liable. If the act is a crime, the perpetrator may be arrested and pun-

ished; if it is a mere trespass, he may be made to pay damages, if he is financially responsible; and, if the recovery of damages appears not to afford an adequate remedy, an injunction against the wrongful acts may be granted by a court of equity. If the injunction is disobeyed, the defendant may be imprisoned for contempt.

Now it has been a common belief in this country that, while the individual may be thus proceeded against in any of these ways, the labor union as such, being unincorporated,—that is, being a mere voluntary association,—cannot be made legally responsible for its acts.

The rules of law established by the courts of this country have, it is true, at no time afforded a justification for this opinion. A union, although a voluntary unincorporated association, is legally responsible for its acts in much the same way that an individual, a partnership, or a corporation, is responsible. If a union, through its constituted agents, commits a wrong or is guilty of violence or of illegal oppression, the union, and not merely the individuals who are the direct instruments of the wrong, can be enjoined or made liable for damages to the same extent that the union could be if it were incorporated; and the funds belonging to the unincorporated union can be reached to satisfy any damages which might be recovered for the wrong done. The Taff Vale Railway case, decided last year in England, in which it was held that the Amalgamated Society of Railway Servants could, as a union, be enjoined and be made liable in damages for wrongs perpetrated in the course of a strike, created consternation among labor unions there; but it laid down no principle of law new to this country.

The instances where American courts have issued injunctions against labor unions as such cover a long series of years, and more than thirty years ago an action was maintained in Massachusetts against a union for wrongfully extorting from an employer a penalty for having used the product of "scab" labor. Recently suits for damages against labor unions have ceased to be uncommon in American courts. But, while the rules of legal liability apply fully to the unions, though unincorporated, it is, as a practical matter, more difficult for the plaintiff to conduct the litigation; and it is par-

ticularly difficult to reach the funds of the union with which to satisfy any judgment that may be recovered. There had consequently arisen, not a legal, but a practical immunity of the unions as such for any wrongs committed.

This practical immunity of the unions from legal liability has been deemed by many labor leaders a great advantage. To me it appears to be just the reverse. It tends to make officers and members reckless and lawless, and thereby to alienate public sympathy and bring failure upon their efforts. It creates on the part of the employers, also, a bitter antagonism, not so much on account of lawless acts as from a deep-rooted sense of injustice, arising from the feeling that, while the employer is subject to law, the union holds a position of legal irresponsibility.

This practical immunity of the labor unions from suit or legal liability is, in my opinion, largely responsible for the existence of the greatest grievances which labor unions consider they have suffered at the hands of the courts; that is, the so-called "government by injunction." It has come about in this way: An act believed to be illegal is committed during a strike. If that act is a crime, a man may be arrested; but in no case can he be convicted of a crime except on proof beyond a reasonable doubt and a verdict of the jury, which is apt to contain some members favorable to the defendant. Many acts, however, may be illegal which are not criminal, and for these the only remedy at law is a civil action for damages; but, as the defendant is usually financially irresponsible, such action would afford no remedy.

The courts, therefore, finding acts committed or threatened for which the guilty parties cannot be punished as for a crime, and cannot be made to pay damages by way of compensation, have been induced to apply freely—perhaps too freely—the writ of injunction. They have granted in many instances this writ according to the practices of the court of equity upon preliminary application, wholly *ex parte*, and upon affidavits, without any chance of cross-examination. If the courts had been dealing with a responsible union instead of with irresponsible defendants, they would doubtless, in many of the cases, have refused to interfere by injunction, and have resolved any doubts for defendants instead of plaintiffs.

In another respect, also, this practical immunity of the unions has been very dearly bought. Nearly every large strike is attended by acts of flagrant lawlessness. The employers and a large part of the public charge these acts to the unions. In very many instances the unions are entirely innocent. Hoodlums, or habitual criminals, have merely availed themselves of a convenient opportunity of breaking the law, in some instances even incited thereto by employers desiring to turn public opinion against the strikers. In other instances individual members of the union have resorted to lawless acts in spite of strenuous efforts of the officers to preserve order. What an immense gain would come to the unions from a full and fair trial of such charges if the innocence of the unions were established, and perhaps even the guilt of an employer! And such a trial would almost necessarily be had before a jury, upon oral testimony, with full opportunity of cross-examination: whereas now nearly every important adjudication involving the alleged action of unions is made upon application to a judge sitting alone and upon written affidavits without the opportunity of cross-examination.

It has been objected by some of the labor leaders that incorporation of the unions would expose to loss the funds which have been collected as insurance against sickness, accident, and enforced idleness; that these funds might be reached to satisfy claims made for wrongs alleged to have been committed by the union. I can conceive of no expenditure of money by a union which could bring so large a return as the payment of compensation for some wrong actually committed by it. Any such payment would go far towards preventing future transgressions of the law by the officers and members of the union; and it would, above all, establish the position of the union as a responsible agent in the community, ready to abide by the law. This would be of immense advantage to the union in all its operations.

Again, it has been urged that the incorporation of the union would lead to a multiplication of law-suits, which would involve the union in great expense; but the expense of conducting such litigation would be insignificant as compared with the benefits which would result to the union from

holding a recognized and responsible position in the community.

Again, it has been urged that the unions would not fear litigation if justice were promptly administered, but that it was the dragging out of litigation which was to be apprehended. I take it that, so far as the unions have suffered from the administration of the law, it has not been from delays, but from precipitancy. They have suffered at times in the granting of preliminary injunctions,—injunctions which have been more readily granted because of the irresponsible position of the defendants.

Again, it has been urged that the unions might be willing to submit themselves readily to suit if the rules of law, as now administered by the courts, were not unjust to labor. I am inclined to think that there have been rendered in this country many decisions which do unduly restrict the activity of the unions. But the way to correct the evil of an unjust decision is not to evade the law, but to amend it. The unions should take the position squarely that they are amenable to law, prepared to take the consequences if they transgress, and thus show that they are in full sympathy with the spirit of our people, whose political system rests upon the proposition that this is a government of law, and not of men.

If it is desired to encourage the incorporation of unions, the following change in legislation would probably tend to that result.

Under the laws generally prevailing, the sick and death benefit funds of unions may be reached and applied to the satisfaction of any liability of the unions, whether the union be unincorporated or incorporated.

The labor union performs two entirely distinct functions,—the insurance function, making provision for sickness and death; and the purely business function of seeking for increase in wages or other improvement in the condition of the members. Legislation would seem proper which provided that a certain proportion of the assessments of the unions could be set apart for insurance purposes, and, if and when so set apart and kept apart, should be free from any liability for the general purposes of the union. If such a provision were made to cover only incorporated unions, a distinct encourage-

ment to incorporation would be provided. The discrimination in this respect between incorporated and unincorporated unions could be supported also on the ground that in some States it has been deemed advisable to prevent unincorporated associations from engaging in the insurance business in any form.

There remains the question whether the incorporation of trades-unions ought to be made compulsory.

To this question I should answer unhesitatingly, "No." The advantages to be derived from the incorporation of trade unions are advantages enuring primarily to the workingmen and the unions which represent them. The evils which would flow from any attempt to compel incorporation would be far greater than any advantages which could be derived from incorporation.

It seems to me probable that labor leaders will soon become convinced of the advantages of incorporation. Already there are signs of a change in opinion among labor men on this subject. There are some recent instances of voluntary incorporation of unions; and the numerous suits for damages against officers and members of unions, which have been tried within the last few months, will tend to convince labor leaders, as it has capitalists, that there are advantages also in a limited liability.

3. SHOULD TRADE UNIONS BE INCORPORATED?

BY PROFESSOR EUGENE WAMBAUGH, OF HARVARD UNIVERSITY.

[Read Thursday morning, May 14.]

[*Proof revised by Editor of the Journal.*]

In answer to the question whether trade unions should be incorporated, the instinct of most people seems to be to say "Why not?" The present attitude toward corporations is not, to be sure, thoroughly friendly. No, it resembles the view of some savages as to the Evil One,—an institution not to be loved, but to be feared, respected, propitiated, imitated, and, though possibly by and by to be regulated or destroyed, for the present to be considered inevitable and normal. Yet, although this is the contemporary attitude of the public, and although corporations, large and small, are now so very common as to encourage the impression that they are the most natural things in the world, the truth is that corporations are merely artificial, that they are nothing but creatures of the legislature, and that they should not be created unless their existence is for the public welfare. Consequently, to the question whether trade unions should be incorporated the proper counter-question is not "Why not?" but "Why?"

In the present instance the presumption against incorporation is stronger than usual. Incorporation is a privilege, giving, among other advantages, concentration, permanence, and partial exemption from losses; but incorporation is apparently urged upon trade unions by capitalists, and capitalists have recently contended that organizations of workmen ought to be ignored, and, if practicable, abolished. Doubtless, it is possible at one time to believe in dealing with workmen one by one, and at another time to believe in dealing with workmen in a body; but the change from one of these beliefs to the other, and especially the change from belief in no organization at all to belief in the most consolidated form of association possible, is a change so radical that it must be expected to be made slowly and to be accompanied

with careful explanation. In this instance, however, the change of front has been made with such suddenness and with such slight explanation as to inspire doubt whether it is wise. Again, the change has been made in a time of excitement. Although it is possible for excited persons to be safe advisers, the probability is the other way. Obviously, the suggested incorporation of trade unions should be examined with unusual care both by workmen and by the general public.

The one reason urged for the incorporation of trade unions is that thus there would be an increase in workmen's responsibility. The word "responsibility" has an embarrassing number of meanings; and several of these meanings are germane to the present discussion. The word is sometimes used in the legal sense, and then a person is said to be responsible whenever a remedy against him is given by the law. Thus, if workmen combine to threaten persons taking the place of strikers, the workmen combining are said to be legally responsible. Again, "responsibility" is sometimes used in simply a business sense; and then no man is called responsible unless he has property so large and so accessible that the holder of a judgment can procure satisfaction. In this business sense it may happen that those same workmen are not responsible. Still again, "responsibility" is used in another sense somewhat similar to the business sense just now pointed out, but distinctly disgraceful; for in an instance where a wrong-doer, whether a natural person or a corporation, is believed to be so influential that—although in the legal sense there is responsibility, and although in the business sense also there is responsibility—the law, through the imperfections of legislators or of judges or of jurors or of other officials, will not in fact be executed, the wrong-doer thus exempt is said to be irresponsible. It is in this last sense that irresponsibility has been attributed, perhaps inaccurately, to the owners of a building carried to an unlawful height in the most conspicuous square of Boston. In short, one is not fully responsible if no action is given against him by the theory of the law, or if he is so poor as to be below the law, or if he is so influential as to be above the law.

It is certainly desirable that every one who is conceived to

be possibly a wrong-doer should be responsible in each of the three senses explained, and hence the next question is whether in one or all of these senses the incorporation of trade unions tends to create, or at least to increase, responsibility.

Throughout the discussion it must be borne in mind that any workman personally committing a wrong against person or property is responsible legally, and that in a business sense he is responsible to the full extent of his property—less exemptions from execution; and that, in case he has been guilty of a crime or of disobedience to an injunction, he is subject to imprisonment. Further, it must be borne in mind that, in addition to this individual liability of workmen, trade unions, though unincorporated, are in the legal sense responsible for the wrongs done through the orders of their officers while acting within the general purposes of the associations, and that this last responsibility attaches to the common funds. Still further, the contracts of individual workmen and of unincorporated organizations create responsibilities in the same sense as do wrongs against person or property. Finally, it is not known that there is any jurisdiction in which individual workmen or their organizations are above the law. The principal difficulties in gaining satisfaction against workmen and unions are practical — namely, that they are not wealthy, and that it is not easy to identify perpetrators of wrongs to persons and property, and that it is still less easy to prove connection between wrongs and the unions.

The question whether incorporation would materially alter the situation suggests a distinction as to the kinds of incorporation now available in many jurisdictions. On the one hand, workmen may be incorporated for benevolent purposes exclusively; and, on the other hand, they may be incorporated wholly or partly for business purposes.

If we suppose that the corporation has exclusively benevolent purposes, it will collect money from its members and will pay it back to them or to their representatives in such emergencies as sickness, death, and lack of employment. This is a sort of insurance, objectionable, by the way, from the point of view of insurance men, for the reason that the whole fund may be destroyed by one disaster, and questionable from the point of view of the general public, because it is not desir-

able that workmen, and especially workmen in any one business, should treat themselves for charitable or social purposes as a distinct class, and also because the existence of a large fund for the unemployed encourages unnecessary and unsuccessful strikes precisely as excessive wealth promotes extravagance and idleness. Now it is obvious that it is foreign to the purposes of a benevolent organization to promote directly business interests of its members; for example, to declare strikes or boycotts and to make contracts as to rates of wages. Yet it is not inconceivable that the officers might do such acts in the supposed interest of the corporation; and, in that case, in the absence of express authorization or subsequent ratification by the members, there is a difference of opinion upon the question whether such acts are to be deemed the acts of the corporation. If the view should prevail that such acts create no corporate liability, the result is that the responsibility of workmen is in no sense increased by incorporating labor unions for benevolent purposes exclusively.

Yet persons suggesting incorporation with a view to increasing responsibility have in mind, very probably, incorporation for benevolent and business purposes combined, or possibly incorporation for business purposes exclusively. In this discussion it is convenient to call a corporation organized either with mixed purposes or with exclusively business purposes a business corporation. Let us imagine, then, that a trade union is incorporated for the purpose both of providing for sick or unemployed members and of regulating the relations between workmen and their employers. Such a corporation might have officers managing its affairs, stockholders, shares with a certain par value, and a fund composed primarily of the proceeds of the sale of shares. This corporation would not be legally responsible for the wrongs or contracts of any one or more of its stockholders, but it would be legally responsible for the wrongs or contracts authorized by its officers in the course of its business. Further, the assets of the corporation would be liable for the damages caused by these wrongs and contracts. Finally, there would be a legal liability on the part of the stockholders themselves to pay into the corporate fund such sums as might be nec-

essary to enable the corporation to meet these claims, although, to be sure, this stockholders' liability is subject to qualifications, and usually does not extend beyond paying for the stock in full and making an additional payment of the same amount.

More specifically, in case of illegal interference ordered by the proper representatives of the corporation, or in case of a breach of a contract entered into by those representatives as to rates of wages, there would be a new legal responsibility;—namely, a legal responsibility on the part of the new legal entity, the corporation itself; and this new legal responsibility would be supported by a new business responsibility, because there would be corporate assets.

Yet it must not be inferred hastily that these new responsibilities would be of value. In the first place, although there is difference of opinion upon the question whether the legal liability for the wrongs and contracts described would attach to such corporate funds as might be raised not by sale of stock, but by contributions made clearly and exclusively for benevolent purposes, such as aiding stockholders when sick or unemployed, there is not the slightest doubt that such contributions would be perfectly protected if held by a separate body; for example, a benevolent corporation composed, possibly, of precisely the same persons. To take from the business corporation the control of funds meant to take care of cases of sickness and death would obviously be just. To treat funds for the unemployed in the same manner would be of doubtful propriety; for the lack of employment would often be due to a strike, and the declaring and managing of strikes in the interest of stockholders would be a considerable part of the work of the business corporation. However improper it might seem to capitalists thus to separate the benevolent funds, the separation would certainly take place; and workmen would deem this course justified by such devices as those whereby the railway companies of Pennsylvania evade the constitutional provision forbidding them to mine coal.

Now, as the sums required by trade unions for benevolent purposes, including the support of strikers, are much larger than the funds required for any other purpose, it is probable

that the capital stock of the business corporation would not be large, and that in a business sense such a corporation would hardly be called responsible.

Nor is this result changed by the existence of a limited liability of the stockholders themselves, for the actual inefficiency of claims against individual workmen is one of the chief grounds for urging incorporation.

Further, the legal liability of the business corporation for the wrongs committed by its authority, as distinguished from breaches of its contracts, would largely be illusory; for the records of the meetings of stockholders and directors would seldom indicate that wrongs were authorized, and in most instances it would be practically impossible to prove that the wrong in question was not the unauthorized act of the wrong-doer himself, and, as has been said, the corporation would not be legally responsible for such an independent act, even though committed by a stockholder, and, it may now be added, even though committed with the thoroughly accurate belief that the act would aid the corporation to bring to a successful close the undertaking in which the corporation was engaged.

It seems, then, that the incorporation of trade unions, even for business purposes, would not result in as great responsibility, either in the sense of legal responsibility or in the sense of business responsibility, as might easily be imagined. The chief results attained with certainty by incorporation would be that the legal responsibility of the incorporated trade union would exist in the place of the legal responsibility of the unincorporated association, that the trade union would assume a more solidified and permanent form, and that the new organization could sue and be sued in its collective name without the necessity of ascertaining and naming the members. In case of litigation the change would be a convenience. The question remains whether the advantages of the change would be purchased at a price too large for workmen and for society in general.

Are there not incidents which cause corporate organization for business purposes to be a difficult form for trade unions? A corporation is not temporary, but permanent, and it is not easily terminated when changed conditions render its

existence unnecessary. The conditions surrounding employments, both skilled and unskilled, are changing constantly, and it is impossible to predict whether a few years hence it will be desirable to have among coal miners, for example, one association or two or more. Again, a corporation is necessarily governed by a small body, and perhaps in fact by only one person, and against the acts of the governing power of a business corporation the minority of the stockholders can have little remedy. The stockholders have not even that remedy of withdrawal which in the case of an unincorporated association acts as a check upon mismanagement, for a stockholder cannot withdraw without obtaining a purchaser for his stock. Now the stockholder in a trade union, wishing to withdraw because of dissatisfaction or of removal or of change in occupation, would find this difficulty peculiarly irksome. He cannot have unlimited power of selling his share; for otherwise he might sell to a person not interested in the business or to a capitalist, and control of the corporation might pass into hostile hands. Finally, when the stockholder in a trade union died, something would have to be done to prevent the share from passing into the ownership of a representative unfit to have voice in the corporation's affairs.

Undoubtedly, machinery can be devised to meet these difficulties; but the machinery must consist of devices whereby stock in the corporation is deprived of the usual incidents of corporate stock and whereby ownership is rendered as analogous as possible to membership in a voluntary society. And, by the way, one obvious regulation of this sort would forbid any person to own more than one share, or at least to have more than one vote. The difficulties, then, though not insurmountable, call attention to the fact that for workmen a business corporation is not an appropriate mode of organization.

The business corporation is worse than inappropriate. It endangers the chief benefit for which the public is indebted to trade unions. It is to trade unions that the public is indebted for restraint upon the vast power of combinations of capitalists. Yes, it is a fact that to workmen more than to the law the public is thus far indebted for this great and

necessary service. The trade unions, doubtless, have been seeking their own ends; but because workmen are so numerous that their welfare is of great importance to the whole community, and because the curbing of the power of combinations of capitalists as to workmen is necessarily a curbing of that power in every direction, the fight of the workmen has been a fight for each and every one of us. A converse benefit received by the public at the hands of capitalists—insistence that workmen must obey the law—has also been dependent upon the thoroughly sincere opposition of workmen and capitalists. If incorporated trade unions, instead of being the exception, became the rule, would this opposition continue?

Notice the change that would take place in conditions. When trade unions are incorporated as business enterprises, they will be much more easily and permanently controlled by one group or by one man than while they remain mere voluntary associations. The controlling power can easily be ascertained and consulted by employers. Between the trade union corporation and the employers it is perfectly feasible to effect an alliance, defensive and offensive. Unquestionably, the alliance would mean an increase in wages; and, unquestionably, it would mean a still greater increase in prices. Already it is said that employers would recognize incorporated trade unions, and would be willing to make long contracts with them as to the rate of wages. In short, the danger is that trade unions incorporated for business purposes will combine with capitalists, and that the resultant combination will be managed largely in the interest of capitalists and in disregard of the interest of the public. Such a combination of workmen and capitalists would be able to defy the law, and, in fact, would be, in the disgraceful sense pointed out near the beginning of this discussion, irresponsible.

It is true that one cannot predict this result with certainty; but it is a possible result, and it would be disastrous, and the danger is quite imminent enough to overbalance the slight advantages that might be brought about by turning trade unions into business corporations.

Here, then, is an occasion for declining to encourage the wholesale creation of artificial persons with dangerous powers.

Doubtless an artificial person may be benevolent and beneficent; but doubtless such a creature may be morally irresponsible and practically uncontrollable. There is wisdom as well as imagination in Mrs. Shelley's romance of "Frankenstein," picturing an artificial creature made by man, with human form as nearly as might be,—a creature strangely powerful, but without moral sense and beyond the control either of its creator or of itself.

The whole argument against incorporation cannot be presented by any one person, and still less the arguments on both sides. What has been attempted has been to present from the point of view of the public so many of the more important considerations as to show that incorporation should not be favored hastily. As has been pointed out, in any case the presumption is against creating an artificial person,—a corporation; and the presumption is the stronger in this case, where the suggestion comes not from workmen, but from capitalists, and somewhat suddenly. And the reason given—namely, that incorporation would cause new and valuable responsibility—largely fails, even though the corporation should have capital stock and business purposes; and the structure of a trade union as a business corporation must be abnormal. And, finally, there is attached to trade union incorporation for business purposes a grave danger to society.

In short, in this instance incorporation, though attended with a few conveniences, is unnecessary, inappropriate, and dangerous.

Do not forget the danger. If incorporation of trade unions should lead to combinations of workmen and capitalists, the results would be far-reaching. One result might be a species of industrial peace; but peace at that price would cost too much. Opposition of workmen and capitalists—lawful opposition—is one of the most valuable assets of the public.

In commenting upon the substance of the foregoing papers, Mr. John F. Tobin, President of the National Boot and Shoe Maker's Union, said: This is a subject which has engaged the attention of a great many thoughtful students of social economy as well as thoughtless critics of the labor organizations. The agitation favoring the incorporation of trade unions during recent years indicates an apparent desire to curb the growing power of the unions, and it is a splendid testimony to the value of the trade unions and is a sufficient answer to our critics, who declare that the trade unions have accomplished, and can accomplish, no practical results.

The principal argument advanced in favor of the incorporation of trade unions is that it will give security to contracts made with labor organizations, and make them liable for damages to the same extent as the employer. At first glance this appears like a sufficient reason for the incorporation of trade unions; but, when you take into consideration that in matters affecting contracts between employers and unions legal redress is seldom or never resorted to by the unions against the employer for violation of trade agreements concerning wages, hours of labor, or any other condition affecting the relations between employer and employees, the reason is not so apparent.

The keenness of competition for business between the employers in the various industries has the natural effect of prompting each employer to economize in every way possible so as to cheapen his product, and thus secure the inside track as against his nearest competitor; and, as labor remains unorganized, it becomes an easy prey to encroachments upon its wages, hours of labor, and still further exertion, calling for closer application to work under high pressure during long working hours.

This tendency to cheapen production becomes more and more pronounced as the margin of profit diminishes, and we approach nearer and nearer to the trust period in the different industries. This carries with it watchfulness on the part of the employer to make changes in his methods of production; and it very frequently happens that the heads of departments in manufacturing and other lines of business, in their zeal to please their employer, and thus advance their own personal interests, take advantage of every opportunity to lessen the cost of production in their particular branches of the business. Herein lies the disturbing influence which very frequently leads to dissatisfaction and eventually to strikes, and very frequently what is charged against the unions as violation of trade agreements. Hence it is that we have those who advocate the incorporation of trade unions, so that employers may, through court decisions, successfully resist trade unions in protecting itself against such encroachments.

Within the last few days my attention was called to a case of this kind which occurred in St. Louis, Mo. Under a contract which we have with an employer there, it is agreed that no change in wages shall take place except by mutual agreement between the union and the employer. In a certain part of the factory two men were employed on machines of

identical speed, one man at $15 per week, and the other at $13.50. Recently the $15 man was taken from the machine and placed on another job. The $13.50 man was advanced to the other machine; but his rate of wages remained $13.50 per week, and the machine that he formerly operated passed to a still cheaper hand. This is a case wherein there is no legal redress, although it is plain to be seen that the wages yielded under the two machines has been reduced. Our only remedy in this case lies in the fact that we have a valuable trade factor, known as the Union Stamp of the Boot and Shoe Workers' Union, the use of which is embodied in an arbitration agreement which we have with this firm; and, having established the fact that there has been a reduction in wages, we can require that the wages be restored, or that the contract be cancelled because of its being violated.

It is my opinion that the old-fashioned prejudice against trade unions is responsible for many of the conflicts between labor and capital. There is a growing tendency in the direction of recognizing the right of labor to organize and bargain collectively for its labor. At least we find it so in the shoe trade. Many manufacturers who have for several years discouraged the organization of their employees, and who have selected their hands because of their known opposition to unions, frequently consult with us as to how they can change their attitude toward their employees in this respect and make a contract with us as a union, which would require their employees to be members of a labor organization, and thus reverse their entire policy, and do business with the union instead of against it, as heretofore.

The incorporation of trade unions would tend to widen the breach between labor and capital, and would not, to any extent, make contracts with labor unions more binding. The organization which I have the honor to represent is not incorporated, and still our reputation for keeping our contracts is well established, and our ability, as well as our disposition to do so, has been well illustrated in Lynn and Haverhill just recently.

Every reliable business institution in this country feels its moral rather than its legal obligation to keep its contracts; and we believe that, if every business institution treated a labor organization as if it were not going to assume the management of the business, but simply to exercise its right to make a collective bargain for labor, then the sooner would it become apparent that contracts between employers and labor unions will be just as binding as between any other two bodies not incorporated, but actuated by a desire to honorably stand by its contracts.

Not legal obligation, but a sense of fairness and a spirit of justice and the pleasure we find in keeping our obligation in accordance with our past record, is the best guarantee we can offer, and is better than incorporation or bond of any kind.

The application of strict business principles and the recognition of mutual obligations as between parties to contracts will produce better and more lasting results than any scheme of incorporation.

Agreements between employers and local associations of labor are

to be avoided if the best results are expected, as disagreements may occur which would result in disaster to both parties, unless restrained by the agreements being made binding upon a national body, thus avoiding the possible repudiation of agreements made locally because of impositions upon employees by persons in authority without the knowledge of the employer, or, on the other hand, through some local excitement such as suggests the sympathetic strike.

4. JOURNALISM AND PUBLICITY.

BY ST. CLAIR McKELWAY, LL.D., OF BROOKLYN, N.Y.

[Read Thursday evening, May 14.]

Mr. President and Friends,—My subject, as announced, is "Journalism and Publicity." One might say that the two words are synonymous. At least, it is difficult to think of the two apart. The significance of journalism is its publicity. Publicity finds channels of speech as well as channels of print; but print is its paramount medium, and without it that which we call news would have slower transit and greatly reduced vogue. The only way to make the two words stand over against one another is to put publicity in its antithetical relation to privacy. Thus, when we talk of Journalism and Publicity, we suggest Journalism and Privacy; and by talking of the latter two terms we suggest the former. One of my colleagues at a later stage of our sessions will talk about "The Right to Privacy." Our subjects were selected by or assigned to us without our consultation. Mine will hardly lap over on his, because he may be expected to speak on the legal phases of a proposition, while my treatment of it will concern itself very little with those phases.

Let us clearly set forth what is meant by the main terms of the subject.

The Journalism not Meant.

"Journalism" as a word signifies something issued in print every day. In what I shall say, daily journalism, I take it, must be meant. There is a weekly journalism. But it can hardly come within consideration. The reasons why it cannot are passingly worth noting. One kind of weekly journalism is devoted to the exploitation of crime and to the brutal sports of the underworld. Pugilists do not object to publicity, though many gentle readers object to the publicity of pugilism. Not a small proportion, however, of those who so object read what they reprobate, and protest against the publicity of it

for fear of the injury that it may do to others or as a form of *amende honorable* of their conscience to their curiosity, just as a prayer is at times a reparation which the mind tenders to the heart as an offset to a favored sin. As to the objection of criminals to publicity, nothing need be said. They do not like to come to the light, lest their deeds be reproved. Publicity is the enemy of crime and the preventive of it.

There is another sort of weekly journalism which invades privacy by scandalous imputations and salacious writings. It exists alone for the purpose of feeding and increasing the appetite to which it appeals. It is not conducted on the rules of general legitimate journalism at all. It is not amenable to those rules. It has its main circulation among those who believe that the private affairs of other people are matters which it is not bound to respect. It is, I assume, on these accounts outside the realm of the discussions of this Association. Our discussions, I further assume, should deal with desirable change and with redressible evils. The evils of the kind of journalism to which I have referred, if redressible at all, impose on grand juries and district attorneys more of a duty than on the class of readers before me, who, I must suppose, do not contribute to that kind of journalism the support which comes by purchase or the prevalence which proceeds from perusal. The kind under passing notice does not fall within the case I am considering.

Still another sort of weekly journalism is barred from serious attention. It is represented by amiable and innocuous weekly publications devoted to what it calls society gossip and news. Longevity is not the rule of this kind. The weeks in a year are too many to measure the vital persistence of some of these sheets. Their favorite venue will be found at watering places or mountain resorts. They come out with the butterflies and go out with the mosquitoes. They are the ephemera of what is called "a season." The "society" of which they claim to be the exponents contributes, as a rule, the news of its own movements and events to them. Those folk do not contend for the privacy of their lives. What they contend for is primacy for their items. They quarrel with these sheets only when they give to their hints or notices or occasions less space than they think should be given. These things are more

effusive than offensive. They are really conducted by their contributors. Their contributors, as a rule, comprise their whole constituency. The editing of such things is incompatible with the idea of brain fever, for the adjective cannot be placed before the noun. Their function is that of a sifter or a strainer. By dropping an item in the slot of tattle, one draws out a personal notice of one's self or one's gown or one's horses or one's servants or one's dinner or one's guests. We are assured that the folk thus honored are made happy by this process. For people who like that sort of thing, that is precisely the sort of thing they like. These sheets are harmless. They have neither malice nor manliness. They are as free from virulence as from virility. They really belong under a sort of trade classification. The guild of gentle and unjaundiced gossip produces and patronizes them. Their circulation is as restricted as their scope. Their contents are confined to the subjects for which they exist. Those subjects are of absorbing interest to what are called dudes and buds. They never contain anything to bring a blush to the cheek of the most inane young person. They inspire no hostility. One would as soon commit assault and battery on a five o'clock tea as to be angry at them. One would as soon bring out a squadron of artillery to bombard a field of dandelions. So long as their constituency does not complain of them, no one else is called on to do so.

Under the same head of guild publications not a few theatrical weeklies should be rated. Their articles are personal. Their tone is comically acrimonious or absurdly laudatory. The profession for which and on which they live is, however, responsible for them, and they do not really fall within the purview of this discussion.

The Journalism which is Meant and the Complaint Made.

The excluding process might be extended, but surely its purpose has been accomplished. The journalism which is within your minds should be brought to the front by the very act of sweeping out of your minds the journalism which is not in the case. The journalism really opened to review here

is that of which all or some of its constituency complains, whether reasonably or not. It is that which such a constituency regards as an offender. It is a journalism of which the circulation suffices to make considerable any cause of offence which it gives. It is a journalism amenable to public opinion and dependent on it.

Of this journalism complaint is made. Now what is the complaint? It is that such journalism invades the right of privacy, or that within it such a right is invaded. In strict construction, what is a right? It is something of which a person is possessed or to which he is entitled by nature or which has been conferred upon him by law or custom or which becomes his by the course of the scheme of things in the world. The primary rights on an authority Americans will not dispute have been summed up as "life, liberty, and the pursuit of happiness." Within them the right to privacy is included as it were, like a letter within an envelope. In several senses and under many circumstances privacy is among the things that make life worth living. It is essential to the liberty of thought and certainly to the liberty of expression, and to "all the comforts of home." We may even say that in privacy actual thought, real thought, sincere thought, is alone fully expressed, as a rule. In the pulpit it is not always heard for fear of fell effect on the pews. From the platform it is not always expressed for fear of fell effect on the public. In the legislature it is not always expressed for fear of fell effect on the "districts." In the press it is not always really expressed for fear of fell effect on subscribers, although the freedom and frankness of utterance in newspapers is becoming greater and greater every year. In none of these grand departments is the thought of men actually repressed or prohibited. But the utterance of it is modified by the parliamentary rules and by the conventional usages inseparable from the association of men in any form.

One might suggest that those rules, usages, and courtesies actually make the modification of thought which they impose a nearer expression of judgment and of justice than the latitude and the liberty allowed by absolute privacy would assure. But that is not exactly the subject which we are considering now, and more than the suggestion of it cannot be indulged.

The invasion of the right of privacy is destructive, at times, of considerable happiness in those affected by it. The proposition is too self-evident to need enforcement or illustration. Such an invasion must, therefore, be conceded to be a denial or an impairment to a degree of some of the primary rights of men. If the charge of wantonly invading the right of privacy can be sustained against the legitimate press, the matter is a serious one. To invade is nearly always correctly thought of as to force your unwelcome way in. There is, however, invasion and invasion. There is an invasion for what the public has a right to know. Public right in such instances must be made very clear. It is not created by public curiosity. It is hardly extenuated, and can only be sophistically defended by the plea of public curiosity. It must issue from the public welfare, and it must tend to promote that welfare. All will admit with me that, if anything in this world ought to be private in addition to a man's home, his telegrams his letters, and his bank books ought to be.

Privacy Affected by a Public Interest.

Yet tread gently here. Tweed's bank account was not respected. It was wantonly invaded by Charles O'Conor and Samuel J. Tilden. All honorable newspapers and all honest men now applaud that invasion. It was held to be essential to the proof of Tweed's robbery, necessary to the exhibition of the division by Tweed of the public money which was privately and officially stolen. It was seen to be indispensable to the discovery of what remained, from which to secure his conviction. The reader will say, "But he was a criminal, and that made a difference." It is easier to say that now than it was when the thing was done. It was not easy to say it then. O'Conor and Tilden and the few bold newspapers where they lived which were behind them were charged with the same invasion of the right of privacy brought against the press now. To-day the descendants of the offenders then punished, sufferers for the sins of their fathers unto the third and fourth generations, have never forgiven the journalistic invasion of the right of privacy which was forfeited by public misdeeds or suspended by the operation of

public interests. Nor should any citizen in whom memory is a quickener of morals or a promoter of patriotism fail to recollect that in 1876–77 a committee of Congress ransacked many private letters and seized many private telegrams in hope to determine whether the Presidency of the United States had been bought or sold or bidden for or hawked about in the preceding election. That committee sat a while in my city. Its open proceedings were published in all the newspapers. They were read with an interest rarely commanded by fiction or exceeded by tragedy or equalled by poetry or comedy. Every right to privacy was made to yield in that investigation to the paramount right of public honor, political safety, and moral justice. Universally, but ineffectively, the complaint was that the invasion did not go far enough, not that it went too far. The complaint was that the letters and telegrams of the other political party were not also seized and published. They could not be. They had been judiciously burned before the investigation began.

Recall the repeated and applauded invasions of the right of privacy by legislative investigating committees in New York City, when the corruption of both political parties was laid bare with a report like that of the guns heard round the world, when fired from Concord Bridge. Who can say these invasions were not right? They unearthed the sale of law. In instances they made the receivers of stolen moneys disgorge them. They held up to infamy those who had bought wrongs and sold rights. They disclosed guilt and protected innocence.

You must admit with me that the whole matter turns upon consideration affected, as the courts say, by a public interest. To expose, punish, and stop the looting of a treasury is an adequate public interest. To tell whether the national will has been nullified by corruption or reversed by force is an object tremendously affected by a public interest. A journalism which does that is a public protector. It may be a moral avenger. It is certainly a public benefactor. The privacy it invades is a public property. The whole is of more account than a part. The concern of all is more than the susceptibility of one or a few. There must, however, as said, be a clear public interest. Public welfare must

be the motive, as public interest must be the justification. As far as human nature with its infirmities will permit, the temper shown must be free from vindictiveness. Till wrong abandons secrecy, journalism will invade privacy. It is not nice work, but it is better than plunder. It morally excels what it brings to light. A constable is better than the criminal he captures. A newspaper which flashes on the secrecy of wrong, on the privacy of public offences, the clear white light of publicity, is better than what it reveals. It should not be condemned by the malefactors on whom it turns that light.

Censorship by the Sore.

This leads me to say there is much unjust criticism of the press. A qualification for press criticism is not supplied by the mere receipt of that criticism. Those whom the press censors for cause are likely to censor the press without other cause than their own smarts. Newspapers are often in error, but most of them are more anxious to repair it than commit it or persist in it. Has a man incurred the general displeasure of the community? He blames the paper that says he has, and proves it. Has some particular journal offended a sensitive citizen? That journal becomes his measuring rod for the whole press. Does an editor decline to take a man at his own estimate of himself? That man regards that editor as well-nigh a public enemy. The number of those who can regard a difference of opinion as no proof of moral obliquity is never large. Considerable general culture is required to do so. The specific finish of a distinct art or of a single business or of a particular profession will not suffice for this. Some of the most accomplished merchants are the veriest bigots of sectarianism. Some of the ablest lawyers are the most absolute proscriptionists in politics. Some of the most skilful physicians are Bourbons in theology and partisanship, as well as in medicine. Run back to their sources the reasons of those who perpetually impeach the press, and you will find that they have their roots in personal grievances, in mental littleness, or in spiritual barbarism. Do not think I regard the press as faultless. I am only remarking the injustice of some of the enemies

and the unreasonableness of some of the enmities which it has made, in being more tolerant than some of its readers toward government, politics, morals, theology, reforms, and what not.

This has the appearance, but not the reality, of a digression. It goes straight to the question of the press as an invader of the right of privacy. Government claims, and to government within limits should be conceded, the right of privacy. Yet in final analysis the endurability of government is in the publicity of it. Publicity of it is punishability of it. Of old the cry was, "How shall they hear without a preacher?" To-day the question is, "How shall they learn without a newspaper?" The newspaper now discharges duties of proclamation once delegated to the altar, the church door, the market-place, and the town crier. Ignorance of the law excuses no man. But that is only because the assumption is that the law will be printed and the man can read. When printing was unknown and reading was confined to the few, laws were so simple that they corresponded with the principles of justice and with the monitions of conscience in every breast. That is now impracticable. Government is complicated. Conditions are artificial. Competitions are destructive. And seething disparities of fortune and opportunity divide the race into classes that contend and conflict. Note the difference between the simplicity of the ten Commandments and the elaborate and multitudinous and labyrinthine provisions of the contemporary tariff. We must find out what is the real right of government to privacy and what is the real duty of the press in preventing the excess of that right from working against the welfare of the people.

Government under a Blanket.

We have more secret government than is realized. Every executive session of the Federal or State Senate is an act of secret government. A result is the creation of an artificial prerogative called senatorial courtesy. From that results the division of the appointing power through senators instead of its concentration in the elected President, as provided by the Constitution. We thus have almost as many unelected assistant presidents as there are senators. An endeavor to

level this contention to the plane of law created a cataclysm from which issued the assassination of James A. Garfield. Every press endeavor to get at what goes on in the executive session is resented as an invasion. But every such invasion is in the public interest. To the degree that the invasion is successful are insured the weakening of government in part by oligarchy and the strengthening of government by the people. The more the press can get at the secret workings of politics, the greater the power to elevate the standard of character, capacity, and service in government, or the ability to deliver telling blows against bossism. Newspaper men know this so well that they can only laugh at the credulous enthusiasm which rejoices in fine words of platforms or fine professions set forth in letters of acceptance. Of reformers who carry reform to the verbal stage the woods are full. But they are as useless in newspaper work as a band of music in deer-stalking. The blow at secrecy in government by closed executive sessions on confirmation is one for responsible and accountable government. A favorite policy of this secret government is neither to confirm nor reject nominations, but to hang them up. That is the negation of government. It is the paralysis of action. It is a violation of the good understanding on which government in fact can alone exist. It is in the contract of government with the people that courts shall adjudicate, rulers rule, and senates consent or refuse to consent to nominations. The lubricating oil which enables the wheels of the world to revolve without ruinous friction is involved in this good understanding. Violation of it is moral treason. Recourse to it is the shame of politics. Condonation of it is the reproach of parties. It is the beginning of the end of government. It is due to the vice of privacy where there should be publicity. Jefferson, who foresaw the hearts of men and the core of things, said he would rather live in a country with newspapers and without law than in one with law but without newspapers. Consider the evils and the dangers of privacy in government. Regard the press by interest and instinct as the enemy of that privacy. Then credit it with good results, if not with good intents, in being so.

Divorce at Private Convenience.

The privacy of government is seen in divorces. Every divorce case tried out of open court is an act of secret government. The scandals and wrongs such proceedings often work at times arouse the thunders of the bench, of the pulpit, and of the press, and even the feeble tenor of bar associations. There are three parties to every marriage,—the man, the woman, and the public. Law requires the vital facts of all marriages to be filed for registration and inspection. It formally prescribes the same with reference to divorces. But it seals up the facts in divorce cases with results which have made divorce-getting run with fraud, falsehood, and ineffable outrage on the innocent. In various parts of this country the innocent can be divorced without knowing it. I am not talking about whether there should be any divorces or whether the causes for divorce should be few or many. That is a matter far afield. I am talking of the evils of secret divorce-getting for any cause. A call for reform on this head is general. It can only be affected by making marriages indissoluble or divorce trials public. I am aware that secrecy in divorce-getting is defended on the grounds of the feelings of the parties and on the protection of public morals. Those who recur to public tribunals should weigh the effect on their feelings in advance. The public is an entity as really as the family is. Of justice the foundation is knowledge. The denial to the public of knowledge on the ground of personal susceptibilities is wrong. Divorcing is an act of State sovereignty. Sovereignty should not be masked to conserve personal comfort. Dissolution of marriages should not be a private convenience. The question of the measure of publication of details should be left to the press, for punishment if abused, with loss of repute if abused. That will take care of itself. The passion of the press for publicity is a public security. The good it works outweighs the harm a thousand to one.

Society and the Press.

There is room for reform on the side which the press turns toward society. There is room for reform on the side which society turns toward the press. The right of privacy, when

the public interest is not involved by its disregard, cannot be disputed. But it can be relinquished for what its possessor may deem to be a more desirable equivalent. The press has invaded the right to privacy, but it has at times thought that its intrusion was invited. There is something to sustain that impression. The daily receipt of personal items from the pens of those named in them, with the polite expression that they may be inserted prominently and promptly is the experience of every paper. Request to send reporters to weddings, receptions, and subsequent christenings, at homes and the like, is a feature of the mail of every journal. Quite often precisely the reporter preferred is frankly stated. Advance lists of guests, advance descriptions of gowns, ornaments, decorations, and presents, are kindly enclosed. The menu and the address of the caterer can always be relied on. The intending bride or her father is sure to be the accurate historian. The unconsidered personal equation is generally the groom. So offensive do these personal notices become that those named in them invariably buy a large number of the papers—presumably for suppression. This pleasant publicity is grateful and interesting to the public concerning those whom wealth, culture, or public position makes objects of interest. It is interesting not only to them, but to those who like them. Those who are chronicled by personal request need not be specially considered. Those who are chronicled by general request thereby pay a sort of price for their prominence. The first desire to appear to the world in an agreeable light. This is due either to vanity or to a struggle toward the ideal. It is not reprehensible. There is a pathos in it, if you have eyes to see. None ever saw his name in print in terms which suggested a desirable importance with any poignant sense of dissatisfaction. There is much affectation to the contrary, but it is affectation.

The excessive personalism of the press should be reduced or turned into better channels. All should remember, however, that readers affect journalists quite as much as journalists affect journalism. Medicate the desire for publicity. Would you cure the newspaper, prescribe for the reader. Frankly, however, that is difficult and unlikely. People are intensely interesting. Things are increased in attraction

if the personal equation can be imparted to them. Those who are not regarded wish to be. Real or presumed importance is relished. The assumption can be converted into reality by the aid of print in them who are exercised thereby. Not the extirpation of personalism, but the training of papers and readers to higher standards of expression and to topics on the lines of the world's best interests, is the requirement. Tattle about the useless should be superseded with truth about the useful, gossip about the frivolous by real news about earnest folk. Fashion should be treated as a function, and to it should be given its relative place. But faith and force should be rated above fads, and culture above clothes, and character above both. The press is imitative and sympathetic. When society really determines to foster its own privacy and not to fling its occasions and its persons at the head of the public, then the relation of journalism to the right of men and women to eat, drink, travel, and receive without publication will be respected. The community that would reform the news tone of the press should reform the news tone of its parlors, its tables, and its clubs. The gossip of the press is but the extension of the gossip of the avenue, with the difference that it is less recklessly and more grammatically expressed.

At the evening session of the Department of Social Economy, following some introductory remarks by the Chairman, Mr. John Graham Brooks, the President of the Association, Hon. Oscar S. Straus, LL.D., delivered an address on the subject of

5. "INDUSTRIAL PEACE."

Mr. Straus said: The Association has this year departed from its time-honored custom, and out of deference to the hurry and strenuousness of our age has compressed the usual sessions, covering five days, into two and a half days. As I was largely responsible for this change, it was but my simple duty to be the first to place myself under the press, and, instead of presenting the usual address of the President, to which an evening has in the past been given, to content myself with a quarter of an hour, and to share my time with the learned specialists who will both instruct and entertain you.

I will confine myself to a few general remarks upon the subject which to-day is foremost in all civilized and progressive countries, "Industrial Peace."

The Civic Federation.

My connection with the organization and working of the Industrial Department of the Civic Federation perhaps entitles me, to that extent, to speak from the standpoint of some experience. This department was organized at a general conference held in the city of New York on Dec. 16 and 17, 1901. At that conference were assembled the leading representatives of organized labor, some of the largest employers of labor, and a number of public-spirited men, representatives of the general public. The discussions that followed were free and unrestrained; and, as the proceedings have been published and widely disseminated, I need not dwell upon them. The conference resulted in the adoption of a platform or "Statement of Purpose"; also in the appointment of an executive committee of thirty-six, divided into

three sections,—representatives of labor, of employers, and of the general public. On Dec. 8–10, 1902, the second annual conference was held, also in the city of New York, which in its general nature was like the first, but clearly showed evidences of a more conciliatory spirit and better understanding. The results accomplished by this body have not only fully justified its existence, but have also clearly shown that along the lines of its endeavors the best results toward adjusting labor disputes and securing industrial peace are attainable. The "Conciliation Committee," composed of nine members, three selected from each of the respective groups, has been applied to for its good offices within the past fifteen months in many important and large labor controversies. These applications have come, sometimes from the one side, sometimes from the other side, and not infrequently from both sides. The committee has succeeded beyond its most sanguine expectations in bringing about or materially contributing toward an adjustment in nearly every instance, with the exception of the Anthracite Coal Strike. Its efforts to avert that lamentable and bitter struggle, after bringing about two conferences between the operators and the representatives of the miners, failed largely, if not entirely, because of long standing enmities growing out of wrongs and arbitrary exactions on both sides, far antedating the conferences, coupled with a determined stand on the part of the operators to make no concessions whatever.

The Civic Federation and its Critics.

The plan of organization of the Industrial Department of the Civic Federation has been unfavorably criticised for not giving unorganized labor a representation, and as a consequence unduly leaning toward, if not actively supporting, organized as against unorganized labor. This point of view did not escape the careful attention of the Executive Committee of the Federation, and for that reason its "Statement of Purpose" contains the following: "That at all times representatives of employers and workers, *organized* and *unorganized*, should confer for the adjustment of differences or disputes," etc. Besides, these considerations presented them-

selves, that the third group, "On the Part of the Public," could certainly be relied upon to represent all the laboring elements irrespectively, just as they represented the welfare of the entire community. In what other way could it select representatives; for, had the Civic Federation summoned unorganized labor to have a conference, and select delegates or representatives for its committee, then it could have been charged that by that very act it had promoted the organization of unorganized labor. If at any time unorganized labor as such should select representatives, if such be found practicable, I think I am justified in saying the Civic Federation will welcome such delegates or representatives upon its Executive Committee.

The Contending Forces.

The conflict between employers and workmen—commonly expressed, between Capital and Labor—has never been more concisely, graphically, and fundamentally described than when Roger Williams said, "What are all these strifes and contentions about but for larger dishes and bowls of porridge." This very contention, which is the source of unrest, is at the same time one of the chief factors of material advancement and progress. The highest consideration should not be how to deaden that strife and contention, but how to co-ordinate and regulate it, so as not to break the bowls and spill the porridge. To the extent that labor organizes for self-protection, for the purpose of bettering its conditions and raising the standard of life, it is not only justified, but becomes a contributor to the advance of civilization. But, when labor organizes in a spirit of bitterness and hostility against employers and uses its power to tyrannize over the directing forces of industry and the capital necessary to give it life, to that extent it defeats its own interests, hinders industrial progress, and becomes a menace to social order. The responsibility upon labor, even where it has the power, *not* to exact uneconomic demands, is greater than upon the employers, because the consequences from such demands to labor are more serious, in that the logical result of such uneconomic demands is the loss of employment by the closing

of the shop, and, if generally persisted in, by the destruction of the industry. "Our language," says the Anthracite Coal Commission, "is the language of a free people, and fails to furnish any form of speech by which the right of a citizen to work when he pleases, for whom he pleases, and on what terms he pleases, can be successfully denied. The common sense of our people, as well as the common law, forbids that this right should be assailed with impunity. . . . There is only one war-making power recognized by our institutions, and that is the government of the United States, and of the States in subordination thereto, when repelling invasion or suppressing domestic violence. War between citizens is not to be tolerated, and cannot in the proper sense exist. If attempted, it is unlawful, and is to be put down by the sovereign power of the State and nation." *

The greatest obstacle to industrial peace is not selfishness, but the tyranny of ignorance and uneconomic demands. In the very nature of things the employer class, as a whole, is the more educated, and has a better conception of "enlightened self-interest." But, with the reasonable lessening of the hours of labor and the widening opportunities for education, the laboring class is certainly making great intellectual progress; and many of its leaders are men of wise experience, of education, and of ability, with an enlightened sense of their duties as patriotic, peace-loving citizens. In this connection I will quote from a recent paper read before the American Economic Association by one of the most intelligent and learned representatives of organized labor. He said: "No matter how good an employer's intentions, he cannot allay the discontent with economic conditions; and, owing to the limitations of competition, it would even be beyond his power individually to concede to his workmen conditions substantially better than prevailing standards. So we see the problem is not a matter of the liberality of the individual employers, but of general conditions, that can be improved only by a uniform upward pressure which the wage-worker himself must apply."

I will quote a few more lines from the same writer upon

* Report to the President on the Anthracite Coal Strike, by the Anthracite Coal Strike Commission (58th Congress, Special Session, Senate Document No. 6, p. 76).

another branch of the subject, more to give an example of growing wisdom and conservatism of some of the foremost labor leaders. He says: "The resort to violence by workmen is not to be tolerated, and from an economic standpoint it is unwise. . . . A movement dignified by exalted aims and inspired by the brotherhood spirit, if it depended upon brute force as a means, would soon degenerate into a mob. The provocation to use force is intense under the trying circumstances of a strike, . . . but to indulge in it would justify the antagonism of society, compelled, as it is, to protect itself against such aggressions. The supreme aim of organized society is to make personal vengeance unnecessary, to diminish the necessity for physical force, to make reason and justice govern human affairs."*

Opposition of the Extremists.

I desire to refer to another view of the subject which, unfortunately, obtains among a section of the laborers as well as among some employers, but, I am happy to say, only among the extreme wings of each. Last month, at the meeting of the National Association of Manufacturers, its president devoted a large part of his address to attacking organized labor. Some of his criticisms as to the wrongs and injustice of organized labor were true, but in the main these were negatived in force and effect by a narrow, one-sided, and arbitrary conception of the larger relations of employers and workmen. As to the conciliation, he said: "To my mind this is not the proper time to talk conciliation. . . . Conciliation implies a yielding attitude and a recognition of the validity of distinctive demands made by the opposing side. . . . Neither is it the time to talk arbitration or 'joint agreement.' To arbitrate questions of wages and hours is to introduce artificial methods of determining what they shall be, and an equitable arrangement as to either cannot be effected artificially. . . . Will the employers of this country allow the apparent peace, bought at the price of arbitration, to lull them into a feeling of security? . . . Arbitration is only putting off the day of reckoning. . . . Does it not point to inevitable

*By Henry White, national secretary United Garment Workers, American Economic Association, February, 1903, pp. 174–180. Same paper in *American Federationist*, April, 1903.

disaster? And is it not the course of wisdom to check an evil in its inception?"*

Compare this attitude on the part of the president of an organization composed of six hundred manufacturers with that I have quoted from one of the leading representatives of organized labor, and I leave it to you to judge which of these representatives approaches the burning question of the day in a more conservative and conciliatory spirit, with more wisdom and justice.

The attitude of the socialists is likewise uncompromising. They denounce the unions and the leaders of the unions for entering into agreements with employers. They affirm that the class struggle is irrepressible, and that workmen must fight their employers to the bitter end and make no compromise. The leading organ of the socialists, commenting upon the address of the president of the Manufacturers' Association, says he is correct, that an equitable agreement cannot be effected by the artificial methods of conciliation or arbitration, and adds, nothing is so welcomed as the "straight-out tactics" of that association. "Socialism," the editor concludes, "will triumph as a result."†

The president of the American Federation of Labor claims that organized labor has reduced the number of socialists in its ranks from 33 per cent. to less than 8 per cent. If this estimate is correct,—and I am assured it is,—that fact affords the highest evidence of the wise and conservative tendency of the Federation of Labor, deserving not only the approbation, but the gratitude of all patriotic, peace-loving citizens of our country.

The Outlook Hopeful.

In the past fifteen months, as a member of the Conciliation Committee of the National Civic Federation, I have had frequent conferences with many of the leading labor leaders in the country, and I am free to state my point of view has undergone a complete change in respect to the evolution of the labor question. I have grown more and more hopeful

* David Parry's Address, president National Association of Manufacturers, New Orleans, April 14, 1903.

† *Daily People*, New York, April 7, 1903. See also *National Civic Federation Review*, April 14, 1903.

that, as this country was the first to organize religious and political equality, it will lead the way to a peaceful co-ordination of the economic forces, by equalizing the opportunities for advancement, which is the nearest practical approach to economic equality. The same inherent reasons and causes which render it impossible to maintain a condition of economic equality between different classes of employers obtain as between workers and employers. We can never by artificial or by arbitrary laws equalize the individual capabilities to achieve success: certainly not this side of the grave; and beyond that point, however vivid may be our hopes, our experiences are entirely lacking. Economic stagnation is not economic equality. They have the same relations to each other as life and death. Success in every sphere of life, in the professions, in the workshop, as well as among the captains of industry, is attained by inborn qualities, plus that margin of energy, industry, and ability which the one man puts into his work above the average man, and every effort to curb those qualities by imposing artificial and arbitrary restraints is to level downwards; and, so far as it concerns workmen, it would be equivalent to decreeing once a workman always a workman, and to deprive him of the very opportunities to attain economic equality. It would effectually shut the doors against his advancement, those doors which in this country have always readily swung open to all, without distinction of class, race, or religion, who have the energy, industry, and ability to deserve admission. The maintenance of the open door of opportunity is a fundamental American doctrine, as old as the Declaration of Independence. In this country especially the democratic spirit is engrafted in the hearts of the people, the popular sympathies are on the side of every legitimate effort of the many to better their conditions, so long as they do not in their struggle trample upon unalienable rights of the individual, "life, liberty, and the pursuit of happiness."

Organization on Both Sides.

In conclusion, I have no panaceas to offer as a solvent for the relations of capital and labor. The pessimists see but

one end, the life and death struggle of classes,—such a revolution as devastated the streets of Paris in 1848. But the student of those troublesome times well knows that revolution settled nothing, but caused wide-spread misery and poverty. The solution lies along the lines of evolution, not revolution; and, in my judgment, that evolution will best be promoted, as the first step, by organization on the part of employers in their respective branches of industry. By this means they will be best able to cope with and restrain organized labor in resisting uneconomic demands and unreasonable exactions, and at the same time they will be best able to agree among themselves to accord such terms and conditions as to wages, hours, and employment as tend to improve the standards of life and living among laboring men. Organization among employers will result in placing the adjustment of differences in the hands of experienced and capable men, who will be best qualified by experience and knowledge to treat such matters in a broad and liberal spirit, free from petty enmities and from competitive restraint. Without organization and with unrestrained competition, the well-disposed employer is often prevented from granting his workmen more liberal terms which he regards as reasonable, so long as his less well-disposed competitor holds out against making like reasonable concessions; and, as a result, strikes on the part of organized labor are brought about to correct evils growing out of a lack of harmony among unorganized employers. Besides, strong organization among employers will have a far-reaching moral and disciplinary effect upon labor, and make it easier for the leaders of labor to control their followers and restrain them from making unreasonable demands. The temptations of power which organization gives labor, when not restrained by organized power on the part of employers, is too great not to be misused and tyrannically exercised. Just as among nations one sword keeps the other in its scabbard and makes for peace, so will equality of might conduce to equality of right, and strengthen the forces of wisdom and conservatism on both sides.

II. DEPARTMENT OF HEALTH.

1. PREVENTIVE MEDICINE AND NATURAL SELECTION.

BY CHARLES V. CHAPIN, M.D., OF PROVIDENCE, R.I.

A good deal of criticism is from time to time directed against the humanitarian work of the world, on the ground that it tends towards race deterioration. The principle of natural selection tends to eliminate the inferior elements in the human species, and to result slowly, but surely in racial improvement, by producing individuals better and better fitted for their environment. The work of the physician and surgeon in curing disease, and that of the sanitary official in preventing it, are among the factors which, it is claimed by many, hinder the beneficent workings of natural law by preserving those who are least fitted to survive, and permitting them to increase their kind. It is rarely, if ever, that this matter is considered seriously. Most of the critics confine themselves to general statements, and give the impression that they, after all, consider their position an academic one merely, and scarcely firm enough to warrant the actual restriction of humanitarian measures. We should, however, be ready to discuss this question as fully as possible. If, on so doing, we find that the evidence of the ultimate deteriorating results of our present work is overwhelming, we should frankly admit the truth, and boldly reconsider, from this more difficult position, the problems of disease, pauperism, crime, and other human ills. It is the possible race deterioration resulting from sanitary effort that we are particularly interested in in this section. I am, I fear, not equipped for an exhaustive consideration of this subject, and certainly will not attempt so to treat it; but I have thought much upon it, and perhaps the notions here presented may suggest a further study by more competent persons.

Public health workers are interested, first of all, in the prevention of the communicable diseases, because it is here that their data are the most certain and their work productive of the best immediate results. It is our duty therefore to consider whether this work promotes or retards the action of natural selection, and, if the latter be true, the extent of the retardation, and whether the conditions warrant any change in our attitude or the direction of our labors. Does the prevention of infection lead to ultimate injury of the human species, as is claimed by some? and, if so, is the injury sufficient to warrant the cessation of our work?

Man at present is certainly very poorly adapted to his environment so far as the infectious diseases are concerned. These diseases play a very important part in his life, or, rather, in his sickness and death. An immense amount of human ill, and a very large proportion of deaths, are due to infectious diseases. These infections are due to the invasion of the body by bacteria, protozoa, etc.; and at present man's struggle for existence is largely a struggle with micro-organisms. Natural selection is believed to be the most important factor in the long run in helping species to win in the struggle for survival. What can we expect natural selection to do for man in this particular phase of the struggle?

In order that natural selection should be of avail, it is necessary that some individuals should vary from the normal in such a way as to better fit them to resist disease. There must exist some natural immunity against infection, and this immunity must be hereditary.

Is there such a natural immunity against infectious disease on which natural selection can work? It is generally believed that there is, that individuals vary very greatly as to susceptibility to infection, and also that this variation is much greater in some diseases than in others. Individuals also vary much in their resistance to disease after it is once acquired. It is also believed that this occasional and partial immunity, and also the power of resistance, are congenital. Much remains to be done in the investigation of this subject; and quantitative data as to the prevalence of natural immunity to the different infections are almost entirely lacking though greatly to be desired. With acquired immunity nat-

ural selection has nothing to do. Though in many quarters it is claimed that such qualities as acquired immunity may be inherited, personally, I am unable to discuss the question from that standpoint.

In order that natural selection may operate, it is necessary that the elimination of the unfit should take place in such a manner as to result in their leaving behind fewer mature offspring than the fit. This may be brought about in various ways. In the diseases in question the elimination may take place before the period of sexual maturity, as is the case at present in our own country in measles, scarlet fever, and diphtheria, or the disease in adults may cause sterility or give rise to feeble children, who do not live long, as is the case with the venereal diseases and perhaps tuberculosis.

From what we know of the principles of organic evolution and of the nature and extension of the infectious diseases we are led to the conclusion that natural selection is continuously operating to produce in man an increasing degree of immunity to them. If this is so, is it not also true that the State, so far as it protects the non-immune from infection, interferes with the action of natural selection by the artificial preservation of the unfit? I think this premise may be admitted, and we must acknowledge that the work of health officials in preventing the extension of the communicable diseases is, in the main, antagonistic to natural selection, which is more or less slowly, but surely tending to the evolution of an immune race.

The practical point which I am here venturing to consider is whether we are therefore warranted in abandoning our fight against these diseases and permitting natural selection to have again a free field. Several reasons have occurred to me why we should not.

1. So long as we are unable to exterminate the infectious diseases, natural selection must, notwithstanding all our efforts, continue to operate, though more slowly because of those efforts. As yet we are in most diseases far from the goal of complete control for which we are so earnestly struggling. Hence we are only retarding, not eliminating, natural selection. We may delay the time when the human species shall be immune to existing infections, and by so doing we may

cause the sacrifice of many lives. Whether more suffering and death is entailed by a slow process of natural selection than by a more rapid one, I will leave to the students of biometrical problems to solve; but, even if it should be shown that in the distant end more lives are sacrificed by the slow process, we must set against this the very patent fact that many lives are being saved in the immediate present. It seems to me that we have no right to sacrifice a marked benefit in the present for the earlier realization of a hypothetical result in what at the best must be a very distant future.

2. While partially successful efforts to combat the infectious diseases only serve to retard the process of natural selection, successful efforts, by extinguishing the infection, would render unnecessary alike the artificial contest by the health officer and the natural struggle for existence by the species. It is true that we have not yet exterminated any infectious disease, but we have proceeded far along the road in some instances, as in typhus fever and small-pox; and it is not unreasonable to hope that this much to be desired end may be reached long before natural selection can have established a permanent immunity. At present our principal method of protecting against infection is by isolation, using the term in its broadest sense; and by this means much has been accomplished. But much is daily being learned about the production of artificial immunity, and it is not unreasonable to hope that in the not distant future this may be easily secured against many diseases. It is true there is at present considerable popular prejudice against the induction of artificial immunity; but may we not as reasonably hope for the evolution of greater popular intelligence as for the evolution of natural immunity?

3. We must take into account the wonderful progress of scientific discovery, which at present shows no signs of abatement. We cannot tell what may come to light, even to-morrow, which will put a new weapon in our hands to make us laugh at infection. Surely, we must have enough hope in the future to warrant, not only the continuance, but the re-enforcement of our efforts to preserve life. We ought, so far as this matter is concerned, to do all we can to-day, and let to-morrow take care of itself.

4. We should also remember that the invading micro-organisms are not only carrying on a struggle—a winning one, it is true—with man, but there are many other factors in their existence. They may have or develop enemies, or any number of the conditions of their environment may become hostile or fatal to them; and thus the struggle with man may be ended once and for all without our moving a finger.

5. A few years ago there was clearly set forth in an article by Theobald Smith a fact which is too often forgotten, that the invading pathogenic micro-organisms in their struggle for existence are put at a disadvantage by an excess of virulence. It is of no use to them to kill their host quickly, for by so doing they end their own existence. If the life of the host is prolonged, the organisms will live the longer, and have the greater opportunity of transference to another host. It is evidently for the advantage of the parasite that the host should be only mildly sick, or that the disease should run a chronic course. The tendency, then, is for natural selection to lead pathogenic organisms to lose their virulence. This in the end would lead to their becoming merely harmless parasites. There is some evidence that this condition of things is even now true in certain diseases, as diphtheria and typhoid fever; for we frequently see the diphtheria or typhoid bacilli living for long periods of time in human beings without producing any symptoms of disease. The recent outbreak of small-pox has been unusually mild; and scarlet fever of late years, in this country at least, has rarely shown its old-time severity. There is evidence, then, both deductive and inductive, that infectious diseases tend to assume under natural selection a milder type, and that the invading organisms tend to become harmless parasites. If this is so, then the work of the health officer becomes an aid rather than a hindrance to natural selection in making for the ultimate improvement of the human species. Even the most efficient health officers have cognizance of only a portion of the persons infected with any particular disease. As a rule, those who are severely attacked are known, isolated, and prevented from giving the disease to others. Those who are mildly sick are often, and in some diseases usually, entirely unrestrained, and readily distribute the infection. This mild type, then,

by artificial selection, as well as by natural selection, tends to be maintained; while the severe type tends toward elimination.

It may be objected by some that all pathogenic organisms were once saprophytes or perhaps harmless parasites, without toxine-producing power. This may be admitted, though it is not necessarily true. It is claimed that these organisms have gradually acquired their toxine-producing qualities by the aid of natural selection. This also may be true, but it is also possible that these toxic properties are merely incidental to other physiological qualities, and are not the direct result of selection; but, admitting that the toxicity of these organisms is due to natural selection, there is no inconsistency in the view that natural selection also tends to its elimination. I cannot conceive that toxicity to its host is of any advantage to the organisms in question. If selection has developed toxicity, as it well may have done, it certainly cannot be in connection with its production of disease in its host. It must have been in some other of its numberless relationships to its environment, perhaps during a saprophytic existence, that toxicity was developed. What the resultant would be of these antagonistic tendencies of natural selection in two opposite directions it is impossible to predict. Perhaps it is the varying intensity of this action in one or the other direction in which is to be found the varying severity of different outbreaks of disease. Perhaps the added force of artificial selection, as suggested above, may serve to turn the scale, and induce, it may be, a continuous and quite rapid diminution in the toxicity of the organisms of those diseases which come under the general control of the health officer.

Before closing, one other phase of this subject deserves a moment's notice. The infectious diseases have been held by some to be an important factor in eliminating the feeble, the poorly nourished, and the constitutionally defective. While it is true that such may more readily succumb when attacked by disease, there is no evidence that they are any more susceptible to most of the communicable diseases than are the most robust. The selective action of these diseases cannot therefore be so important a factor in maintaining race stamina as is sometimes assumed.

In conclusion, it appears that natural selection in the relation of man to infection is working for the ultimate good of the race; and, while public health measures are in some respects antagonistic to this process, in others they favor it. Furthermore, the immediate results of preventive measures are so marked, and the chance of overcoming these diseases in the future by other means than the immunity due to selection is so great, that we find no warrant in the principles of organic evolution for abandoning our present warfare.

2. POSSIBILITIES OF THE MEDICAL EXAMINER SYSTEM.

BY SAMUEL W. ABBOTT, M.D., OF BOSTON, MASS.

[Read Friday morning, May 15.]

The solemn farce entitled the coroner's inquest has not been enacted in Massachusetts since June 30, 1877. Nearly twenty-six years have now elapsed since the last jury stood with staring eyes and gaping mouth around the body of some luckless tramp just drawn out upon a river's bank or possibly found upon the roadside with a bullet-hole in his skull.

The coroner in Massachusetts in the last two centuries or more might be, as elsewhere, a tinker, a tailor, or possibly an attorney or a physician. He presided over the deliberations of six men, often selected by a village constable from the loafers upon a street corner. These six men were often expected to decide upon questions involving a knowledge either of anatomy, pathology, or toxicology. It is not strange, therefore, that the coroner's inquest has become an object of ridicule, in consequence of its incongruity and lack of adaptation to the changing necessities of modern society. The published collections of verdicts of coroner's juries rival the writings of Mark Twain and of John Phenix.

But this is not the worst that can be said of the system. Life insurance companies have been defrauded by the connivance of dishonest coroners, the fees due to juries and witnesses have been pocketed, valuables found upon the bodies of the dead have been appropriated, and warrants have been made out and fees collected from county treasuries in case of sudden death reported in the newspapers, the bodies never having been seen by the coroner.

In the words of Mr. Tyndale, to whom more than to any one Massachusetts owes her present system of medico-legal inquiry:—

> The coroner selected his own jury, had supreme control of the investigation, which with the consent of his jury he

could make secret, had power to summon his own witnesses, hear whom he chose and omit whom he chose, was responsible to no superior authority for his action. He could throw suspicion upon the character of the living, blacken the memory of the dead, and oppress and harass a stricken household without cause and without justification. In one word, he could make an inquest, in the worst sense of the term, an inquisition.

A letter received from a neighboring State relates the following incident:—

A man had shot himself in our city. Hearing of it, the coroner summoned a jury and hastened to the spot, only to find the man still alive. What did these men do? Did they send for a physician, and do their best to revive the victim? Not at all. Selecting the nearest saloon as a waiting place, they waited until the suicide had ceased to breathe, and then held the inquest, employing a boy in the neighborhood as a messenger to keep them informed of the man's condition.

Another incident was the noted Barron case, which occurred in Maine some twenty years ago or more, where a whole community is in doubt, even to this day, as to whether a prominent citizen and bank officer was murdered or committed suicide, the blundering coroner having permitted the body to be buried without an autopsy.

Attempts have been repeatedly made in England, the home of this clumsy system, to make radical changes, but without success, undoubtedly in consequence of the proverbial inertia of the Anglo-Saxon when dealing with old and long-established customs.

Victor Hugo gives a keen satirical thrust at the English inquest system in one of his novels, knowing the decided superiority with which deaths by violence are investigated in his own country.*

The registrar-general of England confessedly admits a glaring defect of the English system in the following language:

Unfortunately, many coroners appear to think that the exclusive object of an inquest is to ascertain whether a crime has been committed, and ignore altogether the other purposes, scientific and medical, to which inquests are intended to be subservient. Such vague findings as "natural causes,"

* The story of the Butting Club, in "By Order of the King."

"died by the visitation of God," "sudden deaths," etc., may possibly satisfy the requirements of criminal law, but are utterly inadequate for all other purposes, and cannot be considered as really fulfilling the requirement of the act that the coroner shall state in his certificate what was the cause of death.

What, then, are the defects of the coroner's inquest, and how may they be remedied? The two most radical defects may be summarized as follows:—

1. *The combination in one person of two entirely incongruous functions*,—law and medicine. The object or end of the coroner's inquest is twofold: *first*, to determine the cause of death,—a medical question; and, *second*, to fix the responsibility for the death,—a problem which, especially in cases of homicide, involves a knowledge of law. It is, therefore, plainly an absurdity to unite both of these functions in one person. It is true that an occasional professor of medical jurisprudence might be found who combines both branches of training; but to expect that such persons can be found in every district requiring the services of an official empowered to investigate deaths by violence is clearly impossible.

It is not remarkable that in the remote periods of history, when lands were sparsely settled and both medical and legal training were in their infancy, such a union of functions should be vested in one individual; but it is not creditable to the good sense of the marvellously progressive profession of medicine that it should still continue to tolerate a condition of affairs so inconsistent with modern progress. It is the glaring inconsistency of attempting to successfully combine two professions in one official that so often makes the inquest a source of ridicule.

2. *The retention of the jury.* We here find a needless body of men, called upon in many instances to decide upon technical questions which can far better be settled by a single expert, well trained for the purpose. The jury is not only needless, but expensive, since it involves the payment of a half-dozen men (in some States twelve) for services which can be better performed by a single expert. Thousands of deaths by violence have been investigated in Germany, France, and other countries in a far more thorough and satisfactory

manner than is done in England and the United States, and this without the needless intervention of a jury. It is needless for the reason that, in every case of death by criminal means, a jury must finally decide the responsibility of the criminal in a court of law. Why, then, should two juries act in the case when one only is necessary? Another evidence of the inconsistency of the coroner's inquest is the fact that the findings of such deliberative bodies are very often the subject of ridicule in the columns of the daily press.

How, then, may these defects be remedied, and what difficulties stand in the way?

Abolish the coroner and his jury by act of legislature, and substitute in their places a corps of well-trained medical experts, whose duty it shall be to investigate all deaths by violence, and then report them to designated judicial authorities for further investigation, thus separating the medical from the legal function, and delegating each to its proper set of officials.

If it happens that the coroner is a constitutional officer, then it may become necessary to amend the constitution in order to get rid of him. It may happen, also, that the coroner has unusual political influence. In such cases the more thoroughly the incongruity of this office and the needless expense of the jury are exposed, the better for the State and the whole community. (For example, the relative expense of conducting investigations of deaths by violence in New York City is at least three times as great as it is in Boston.) Enlightened public opinon will usually lend its aid in accomplishing the desired end.

As an example of the successful working of such an improved system, I need only refer to the experience of Massachusetts, which has had neither coroner nor jury for nearly twenty-six years, during which time about 43,000 cases of violent, suspicious, and sudden deaths have been investigated in the most careful and thorough manner and with less expense than was possible under the old system. The radical overturn wrought by the enactment of the law of 1877, abolishing the coroner and his jury, has been one of the most satisfactory changes ever effected in the history of State legislation.

How can the medical examiner system be made to sub-

serve other purposes than that of investigating deaths by violent causes?

The registration of deaths in the older States of the Union, notwithstanding its long existence, is still in a more or less unsatisfactory condition, so far as the registration of uncertified deaths is concerned, and in this respect resembles the English registration. In 1893 a parliamentary investigation was made upon this important question, but no satisfactory action appears to have been taken as a consequence. In England, in 1900, the number of uncertified deaths amounted to 11,257, or very nearly 2 per cent. of the whole number of deaths. In Edinburgh they were occasionally as many as 8 per cent., and in some parts of Scotland from 25 to 45 per cent., of all deaths.*

The following points are worthy of notice in this connection:—

1. The facilities for burials of persons the cause of whose death is not certified.

2. The want of identification of the deceased.

3. The want of careful certification of the details of the last illness. In support of this point is the fact that at least a score of persons in this State are known to have come to their death in consequence of the deliberate action of two women, while the death certificates in these cases show nothing more than deaths from natural causes.

Probably the majority of deaths which occur in the practice of registered physicians are not witnessed by such physicians, and in most of them the bodies are not seen by them after the death occurs, the certificate being made out and signed in consequence of information imparted at second hand by some relative or other person. The attending physician is not absolutely certain either as to the fact of death or as to the particular circumstances attending its occurrence.

4. The want of expert investigation into all cases of death which occur where there was no medical attendant.

5. The want of reliable proof that the supposed deceased person is dead. How often life insurance companies in this country have been deceived in this direction no one can tell. At any rate, it is a notorious fact that such occurrences have become quite frequent in recent years.

* Hime's "Practical Guide to the Public Health Acts," p. 235.

The need of radical reform in this general direction of death certification is sufficiently apparent; and, if it is not practicable to introduce the system now in force in some parts of continental Europe, whereby everybody is seen by an official other than the attending physician before burial, there should at least be some legal provision whereby *uncertified* deaths, and especially those of persons who have died without any attending physician, should be investigated by some competent authority designated for the purpose.

A few years since an attempt was made by several physicians representing different boards of health to secure the enactment of a law which would require such certification to be made (so far as related to hitherto uncertified deaths); and it was proposed to intrust this duty to the medical examiners who had so successfully carried out the work of the medical examiner system of the State. In accordance with the terms of the present law these physicians are "able and discreet men, learned in the science of medicine," and are therefore fully qualified to perform the contemplated duty.

The movement failed, but the necessity is as urgent as ever; and any objections which then existed on account of an insufficiency in the number of officials required for this purpose are now greatly diminished, since an amendment to the medical examiner act now provides a much larger number of physicians, it being possible under this act to double the number of existing examiners by the appointment of associates, and most of these positions have already been filled.

3. WHAT TRAINING IN PHYSIOLOGY AND HYGIENE MAY WE REASONABLY EXPECT OF THE PUBLIC SCHOOLS?

BY WILLIAM T. SEDGWICK AND THEODORE HOUGH, OF THE INSTITUTE OF TECHNOLOGY, BOSTON, MASS.

[Read Friday morning, May 15.]

In the public schools of to-day various subjects are taught, and for various reasons. Some, like arithmetic or the reading and writing of English, are indispensable tools of modern civilized life; others, like geography and history, impart necessary information or promote general intelligence; still others, like algebra, geometry, and Latin, are agents of mental discipline or else afford necessary preparation for subsequent work. Physiology and hygiene, the study with which we are concerned in the present paper, were introduced into the public schools for the express purpose of affording information concerning the structure and functions of the human body, being expected thereby to contribute to the preservation and promotion of health; and they have kept their place, in spite of serious shortcomings, as a concession to the practical importance of sound ideas concerning health and disease.

The training which may reasonably be expected in the reading and writing of English, in arithmetic, in geography, or in Latin, is the subject of frequent discussion in educational gatherings and is doubtless influenced by such discussions; but it is determined chiefly by the examination requirements of the upper grades and by the entrance requirements of higher educational institutions. With physiology and hygiene the case is different. Proficiency in these is rarely made a condition of promotion. They are seldom included in the list of requirements for admission to colleges or technical schools, and never in those for medical schools. They are not often much considered in educational congresses. And yet it is doubtful whether any subject in the whole curriculum of the public schools is of greater intrinsic importance

as a preparation for life, or is capable of affecting more profoundly the whole mental attitude of men and women toward an enduring and well-organized civilization.

The real importance of physiology and hygiene is unquestionably far greater to-day than it was twenty-five years ago. At that time physiology was a new science. It was still commonly taught in medical schools as an adjunct to anatomy, and the double-headed professorship of anatomy and physiology had not then become extinct. As for hygiene, this was largely a body of precepts based upon *a priori* reasoning, or else of deductions derived jointly from anatomical knowledge, common experience, and common sense. Disease was only a little more baffling than health, and the promotion of one poorly understood condition by the prevention of one still less comprehended was not only a most unsatisfactory, but a most unscientific undertaking. Nevertheless, in spite of this difficulty and uncertainty, physiology and hygiene, such as they were, have steadfastly held their place in the curriculum of the public schools, no doubt because of an unconquerable belief that they should somehow furnish to the developing mind and the forming character some real and lasting help in the preparation for life.

And at last this belief seems likely to bear fruit and to justify its long and patient expectation. For to-day physiology has won an established and recognized position as an independent science. It has become entirely separated from anatomy. It has its own professors in our medical schools and universities. We have a strong and active American Physiological Society, composed of expert investigators and teachers, and a flourishing American Physiological Journal, which publishes regularly budgets of important discoveries.

In hygiene the progress has been even more remarkable. Twenty years ago the infectious diseases were as mysterious as ever, but to-day we understand the essentials of their operation and also to a great extent the mechanism of their dissemination and therefore in many cases the ways of their prevention. The clouds of mystery which until lately hung about them have been largely cleared away, and a new hygiene, based partly upon experimental physiology and partly upon experimental medicine, has come into being. Meantime

an enlightened sanitary engineering is building improved sewers and water-works, and dealing with the purification of sewage and water, with the construction of sanitary pavements, with the dust nuisance, and with efficient scavenging and garbage destruction. Boards of health are equipped with laboratories for sanitary testing and research. They are supervising the medical inspection of schools. They are isolating cases of infectious disease and securing the disinfection of clothing and of houses. They are enforcing vaccination. They are vacating unwholesome dwellings.

Educators themselves are engaged in hygienic endeavors. They are providing for playgrounds. They are beginning to attend as never before to the ventilation of school buildings. They are interested in the lighting of school-rooms, in the seating of the pupils, and in their sight and hearing. The home is also receiving the attention of hygienists; and its site, its drainage, its wall papers, its ventilation, its cookery are undergoing careful investigation.

And, finally, personal hygiene,—the care of the individual body, its exercise, its fatigue, its work, its rest, its play, its clothing, its bathing, its hunger and thirst and sleep, its growth and its old age,—all these are dealt with to-day, not superficially and by tradition or experience alone, as formerly, but also by experiment. Physiology and hygiene have become experimental sciences, and have thus taken on a new and higher value. In view of all these marvellous changes, we may properly ask and undertake to answer the question which forms the subject of this paper.

But first and always we must keep steadfastly in mind the end and object sought for by the training under consideration. This has always been and still is primarily practical and technical; namely, a sound preparation for the right conduct of physical life. For although it is one argument for increasing the efficiency of instruction in these subjects that they give information on matters of great human interest, and that, when rightly taught, they are of high educational value, still the primary purpose of teaching them is not to give information nor mental discipline, but because their subject matter is of immediate and enduring importance in determining and promoting the right conduct of the physi-

cal life, and especially the preservation and promotion of health. Their value is special rather than general, practical rather than cultural, technical rather than disciplinary.

We may confess frankly that physiology and hygiene have not always hitherto justified their place in the curriculum by their results. It would be going too far to deny that they have been without influence, or that in exceptional cases they have not been valuable; but they certainly have not, on the whole, accomplished what was originally expected of them. Their results have been disappointing, and it is by no means unusual to hear competent educators express the opinion that it would be better to drop them altogether. Physiology and hygiene are too frequently looked upon by school authorities as an unavoidable necessity, and by teachers and pupils as a bore. And yet we doubt whether any of these superintendents or teachers would care to take the responsibility of banishing them altogether from the curriculum. They may not be a success; but the conviction remains that they ought to be a success, and doubtless the hope, however faint, that some day they may be.

The present unfortunate condition of affairs, in our opinion, is due largely to the fact that the primary purpose of these subjects in the curriculum has been neglected or forgotten. They were perhaps introduced prematurely, as has been suggested; fifty years ago anatomy was the one branch of medical science about which definite statements could be made, but little was known about physiology, and the great field of hygiene was largely a matter either of popular tradition or impressions derived from personal experience, often, indeed, surprisingly accurate, but nevertheless lacking in the certainty of experimentally demonstrated fact.

It is only exact knowledge which lends itself to school instruction. We do not teach electricity in our courses in physics by speculating about thunderbolts or the nature of magnetism, but by telling what we know of the production, the conduction, or the induction of electrical energy. We leave the region of the indefinite to the investigator. It is easy to see, therefore, how it came about that in planning the work in physiology and hygiene in schools the details of gross and minute anatomy should have formed the major part

of the whole. Function was treated but sparingly, because very little was known about it; and considerations of health and disease occupied an insignificant place simply because about them definite statements could not possibly be made. The instruction in school physiology and hygiene was preponderatingly anatomical for the reason that the dissecting-room was the sole laboratory of the medical school. It was the one region of real and accurate knowledge of the subject.

We have said above that this condition of hygienic knowledge has been entirely transformed during the past twenty years. The physician is far less mysterious in his manner than formerly, because his fund of knowledge is vastly greater. He often explains his reasons to his patient, and discusses the facts of his profession with "the laity," where he would not have done so fifty years ago. It was within twenty years that one of our leading pathologists was heard to define malaria by remarking, "When you don't know what it is, it is malaria." To-day he would not give that definition, but would delight to describe the wonderful story of those discoveries which in the past twenty years have led to our satisfactory understanding of the nature and mode of dissemination of this disease.

The teaching of physiology and hygiene in the public schools has lagged far behind this march of medical and hygienic progress. It is inexcusably behind the times. We now have facts which any one can teach and which should be made known as a preparation for the proper conduct of life; and it is these facts which should form the main part of the teaching. The subject-matter should be thoroughly revised, and in no more important particular than the restriction of anatomy to the minimum amount needed to give a clear conception of the general structure of the body as a mechanism and of the normal working of that mechanism. In a rural school-house on the Maine coast we once saw upon the blackboard, painfully written down by a fisherman's child, a long and learned list of the bones found in the human body. Even for a medical student the list, as such, apart from the physiology and surgery of the bones, would have been of small value; for the children of fishermen, the bones of the cod or haddock or of the domestic animals would probably

have been of greater consequence. An arid osteology is a poor introduction to the study of modern hygiene, nor is it calculated to arouse a compelling interest in the subject.

Similar considerations hold with regard to the teaching of physiology. The educational value of this science, it is true, is much greater than that of pure anatomy; for, in the first place, it is more interesting, not only in childhood, but throughout life. We do not care greatly about the parts of a machine unless we know or can guess their use. From this point of view physiology is a good teaching subject, and all the more so because it deals with a machine in which most of us are naturally interested. The study of the activities of the human body has also the highest philosophic value. It imparts that first and most important lesson for the conduct of life,—a lesson which every person leaving the upper grades of the public schools should carry away with him,—that the human body has a material basis and is a mechanism, a machine. We must constantly recall, in order to emphasize Huxley's statement, that "the distinctive feature of modern as contrasted with ancient physiology" is "the fundamental conception of the living body as a physical mechanism." That this fact is not with most people a part of the philosophy of living is shown by the use and abuse of patent medicines and the frequent neglect of the commonest care of the body such as would be wisely bestowed on a watch or a bicycle.

We have urged that anatomy has no place in the public school curriculum except as it is necessary to the understanding of the problems of physiology and hygiene; and we shall see it cut down to the minimum needed for this purpose without the slightest regret. We should not feel the same if physiology were similarly made strictly subservient to personal hygiene,—that is, if, in doing so, its philosophical value were neglected; but, fortunately, this is not necessary. The physiology which is most useful in understanding the problems of personal hygiene is almost exactly the same body of facts which has the greatest philosophic value, and the method of presenting them is the same for the one purpose as for the other. We have not the time to enter into details in this matter, but we are speaking from experience and are sure of our

ground. The instruction in physiology should aim at the outlines of the more important functions of muscular contraction, nervous activity, circulation, nutrition, temperature-regulation,—all of these expressed as far as possible in terms of physics and chemistry. It should endeavor to avoid needless details. To take but one example, the pupil should understand that the heart is a force pump, but it is not necessary that he should understand the exact structure or mechanism of the auriculo-ventricular valves.

Again, physiology should not be made primarily, or even to any large extent in public schools a means of laboratory training. Such training can be had more readily and more advantageously in chemistry and physics. To attempt to give the same laboratory training in physiology as in these would inevitably be to consume that time which is urgently needed for hygiene. The fundamental facts of physiology can be demonstrated and enforced in the laboratory, even in common schools, without much difficulty, and we would not for a moment depreciate the value or the necessity of a certain amount of this kind of instruction; but the use of the laboratory (always time-consuming) must not be allowed to distract attention from the true aim of this work or to interfere with its complete realization.

A course of moderate length in physiology should suffice to impart enough facts of structure and function to furnish a solid basis for sound training in hygiene, and to give meanwhile an abiding sense of the material composition and mechanical character of the human body and its environment and operation. With so much of preparation it becomes easy to pass on to a practical consideration of health and disease, the means of promoting the former and of avoiding the latter. Health becomes simply normal, disease abnormal, living. Such terms as "constitution," "strength," "weakness," "feebleness," "robustness," are easily understood by simple reference to mechanisms well or poorly made or to structures strong or weak. Wounds become interferences caused by invasions or damage by extraneous matters,—bullets, knives, parasites, clubs, dogs, slivers,—which are as obviously out of place as dirt in the works of watches. Germs are microscopic invaders, microscopic para-

sites. They enter and wound and kill, not mysteriously but by damaging or interfering with the human mechanism. Best of all they can often be kept out by the avoidance of exposure, as truly as bullets can.

Passing now to the strictly hygienic part of the subject, first in logical sequence comes personal hygiene, the proper regulation of the activities of individual life,—muscular work, mental activity, feeding, the protection against colds and other inflammations, the care of the body by bathing and clothing and the like. These should not be given in short paragraphs which, like after-thoughts, conclude the chapters in anatomy or physiology, but should be separately and fully treated for their own sake and from the standpoint of the organism as a whole rather than from that of special organs. These are subjects about which every one needs real and true information, and sooner or later seeks it. Shall such information be obtained from the public schools or sought unwisely in the brazen advertisements of magazine originators of new systems of physical training, or in the rash and not disinterested advice of advocates of new breakfast foods?

Modern hygiene begins with the individual, but deals also with the hygiene of the family, of the community, of states, and of nations. In a rapid review of the place which these branches of the subject should occupy in our preparation for sound private and public life, it must not be forgotten that the great majority of the pupils in our public schools have no opportunity or intention to enter colleges or higher schools, and yet are likely to become householders, housekeepers, heads of families or citizens. The principles underlying household or domestic hygiene and sanitation therefore claim some consideration at their hands. These would include such questions as the proper site of the house, the value of fireplaces as ventilators, the importance of wall papers free from arsenic, the advantages of bare floors and simple rugs as compared with carpets difficult to clean, the importance of a pure and abundant water supply, the desirability of prompt removal of wastes by drainage and by such other devices for rural communities as may be made most sanitary under the circumstances, the dangers of damp

cellars with the reasons why cellar dwellings have so often been prohibited by law, the dangers of illuminating gas, especially the modern so-called "water gas," the need of careful consideration and frequent inspection of gas fixtures to avoid small but dangerous leaks, and other similar matters bearing directly or indirectly upon the welfare and sanitary condition of the home. Here might well be told the truth in regard to the advantages and disadvantages of cesspools and sewers, and leaky or otherwise defective plumbing.

Place should also be found, and might easily be made by the sacrifice of some osteology and histology, for a brief consideration of the health of communities, such as thickly settled neighborhoods, growing towns or cities; of the dangers attending impure water supplies and defective sewerage systems; and the importance of methods for the sanitary removal and disposal of garbage, rubbish, and the other wastes of life. Something might well be said regarding the need of proper municipal supervision of all these matters as the essential of a rational municipal sanitation and of the sanitary value of good public service. Here also might be taken up the advantages and the cost of municipal parks, playgrounds, and gymnasia, of public lavatories, water-closets, and wash-houses; of smoke abatement and noise suppression; something regarding clean streets and the thoughtless scattering of papers, banana skins, and the like rubbish, which necessitates a costly scavenging; something regarding pure ice and especially pure milk,—problems in the solution of which all classes of the community must eventually take an active interest and participation, if reform is to come.

And, finally, room should be found for a brief explanation of quarantine, its advantages and disadvantages; the isolation of cases of infectious disease and the reason why it is so essential, though so inconvenient; the necessity for public hospitals for contagious diseases and for municipal or State sanatoria for tuberculosis; the fundamental problems of international hygiene; food inspection, such as that conducted by the federal government for trichinosis in pork to be exported to foreign countries; diseased meat and other problems calling for intelligent co-operation of the citizens in national and international hygiene.

Trained along these lines, the youth of America, whether or not afterward going to college or technical school, would enter upon their maturer life with a realizing sense of the general structure and operation of the body as a physical mechanism and the necessity of obedience to physical laws. They would have become familiar with the sources of diseases and with some of the more obvious ways of avoiding them. They would have some intimation of their duty, not only to themselves and to any families which they might afterwards have, but also in regard to wholesome houses, pure supplies, the safe disposal of wastes, and some of the problems of the municipality and even of the nation of which they are units.

We have, of course, to meet the important objection which will be urged against our point of view; namely, that, desirable as all these things may be, the time available is too short for proper dealing with them. This, however, we deny. Time enough to do all these things and to do them well either is now or lately has been found in the public schools in the various courses for instruction in physiology and hygiene. It will be necessary, it is true, to revise and bring up to date our subject-matter and our methods of instruction. We must teach less about bone and sinew, and more about muscle and nerve. We must teach less about anatomy and histology, and more about the germ theory of disease, about polluted water and polluted milk. We must simplify every statement and eliminate everything unimportant. We must not seek to make of physiology a training in the precision of measurements, or in scientific method, or in anatomy, or physiological chemistry. Some experiments must be made, and demonstrations must abound; but we must keep steadily in view the practical object for which chiefly time is, and long has been, dedicated to physiology and hygiene,—namely, the rational conduct of physical life.

Above all, we must insist upon relief from the incubus of "scientific temperance" instruction, so called, which has too long rested upon the teaching of physiology and hygiene, winding its tentacles about it, octopus-like, sapping its strength and crushing out its usefulness. On this subject let us have no misunderstanding. The evil effects of the use of alcoholic drinks must be fully and clearly inculcated.

The youth of America must be thoroughly informed of the insidious dangers which lurk about strong drink. But, on the other hand, we must never forget that the public schools are no place for any propaganda, and that the freedom of teaching must not be surrendered even to reformers.

Whether we are pleased with the fact or not, modern life has become more strenuous. In order to achieve success, the individual must do more in a given time. Hence the urgent importance of a personal hygiene which shall really guide him in the proper care of the body. Meantime the care of the public health has become one of the most important functions of government, and it will be increasingly important in the future. Its success in America must largely depend upon an enlightened citizenship to which it can look for support. We now teach history and economics and civics with some reference to the future life of the public school pupil as a citizen. Our teaching of hygiene should keep in view a similar end, and if this paper draws attention to the lamentable inadequacy of our present instruction for this purpose, our object in preparing it will have been largely accomplished.

But still more is needed. We require a clear conception of the true place of physiology and hygiene, but we need also the proper teachers to realize that conception. If the subject is as important as we have represented it, it should be taught by teachers specially trained. In the higher grades of our schools we have special teachers of languages, of history and civics, of mathematics, of the natural sciences; but it is rare indeed to find physiology and hygiene in the hands of expert teachers who have had special training in the subject. Too frequently it is imposed upon the least experienced member of the staff, whose connection with the school is too recent or whose tenure is too precarious to permit opposition. All this must be changed. The exact method of securing the trained instructor may well be left to local conditions. At times, medical examiners, the demands of whose practice are not distracting and who are at the same time good teachers, may fill the position; at other times, teachers of the biological sciences may be encouraged to prepare themselves for the work.

A method which especially commends itself to us is to combine this work with that of physical training. The teachers of physical training, of all the instructing staff of the school, stand in closest relation to the work of preservation and promotion of sound health. At present their work is somewhat narrow, and suffers from the lack of any direct explanation of the principles of physical training. It would broaden the work of these teachers, and make their present efforts more effective, if these two branches so obviously related were placed in their hands. True, it would require broader preparation and an extension of the work of our normal schools of physical training both in time and scope; but this is really an argument in its favor. Normal schools of physical training should extend their courses, especially in view of the fact that so many of their graduates must occupy positions in the higher grades.

There is certainly a wide-spread feeling that our present training in physiology and hygiene in the public schools is a failure; but signs are not lacking of a strong feeling among prominent educators that the subjects can and should rank in dignity and usefulness with languages, mathematics, physics, chemistry, biology, history, and civics. Physiologists have long protested against the domination and excesses of "temperance physiology." Educators have complained of the bad pedagogical requirements often placed by law upon the teaching of the subject. We appeal to the members of the American Social Science Association to aid us in bringing about reform, not as parties to either side of a dispute on questions of scientific fact about alcohol, nor from the standpoint of pedagogic theory and practice, but because the subject is one which profoundly affects social conditions and is closely related to a more intelligent individual and social American life.

4. DEATHS BY POISON IN MASSACHUSETTS.

BY ROBERT AMORY, M.D., OF BOSTON, MASS.

Mr. Chairman,—I regret that your sudden call upon me to present a paper before this section will oblige me to give only a rambling talk to be gathered from some loose notes which I have been collecting during the past six weeks for another object which I had in view.

It is hardly necessary for me to state that I well know that the consideration of the subject may result in an undigested mass of detail which may be confusing to our audience, and for which fact I apologize in advance.

My subject is rather a sad one,—"Deaths by Poison in Massachusetts."

Many writers on toxicology have attempted to define what constitutes a "poison," but definite bounds of description are so misleading that for our present purposes it will be better to consider that a poison is any substance that is capable of destroying life with, perhaps, the exclusion of mechanical means and weapons which kill.

Many substances swallowed in ordinary quantities in health, in and under well-known circumstances, may not be recognized as poisonous; but, in unusual quantities and under unusual and extraordinary conditions, these may produce dangerous and sometimes fatal results.

To illustrate: articles of food are not considered poisonous, but under certain conditions these may have undergone a change in their physical composition, in which they become very injurious to health, and even may be converted into active poisons. Food articles may be by juxtaposition with other organic substances, heat of the atmosphere, and moisture subjected to such conditions that they may be a nidus of fermentation. When swallowed in this condition, the process may go still further, and develop an irritation in the intestinal canal where it will form the noxious substance, called by physiologists a ptomaine. These ptomaines, the result of well-known physico-chemical processes, may be ab-

sorbed into the circulation, and cause peculiar symptoms of intoxication of the poisonous substance.

The production of these ptomaines is generally attributed to the presence of bacterial growths, visible under the magnifying power of a microscope, and definitely recognized by the experienced biologist. These growths may exist in the tissues of the living as well as the dead body. Many of the ptomaines give similar chemical reactions, which are with difficulty distinguishable from reactions to chemical tests given in the presence of organic poisons, from the vegetable kingdom, called alkaloids. There are other means, however, by which these two classes of poisons may be distinguished. The older name of ptomaine has more recently been superseded by the use of the word "toxin."

Again, water is a substance which is generally admitted to be innoxious; yet its immoderate ingestion into the stomach of a person in health, especially when forcibly introduced, is not only attended with discomfort, but sometimes with great danger to health as well as to life.

I should also mention the serious symptoms which are often observed to follow the ingestion of the growth of certain fungi on rye and other cereals, which is more familiarly known to you as "ergot." So, also, the eating of mussels and other shell animals which have been taken from stagnant water, or of food taken from unwholesome surroundings,—these may cause gastro-intestinal disturbances; while water containing the disease germs may produce typhoid and other dangers to life. These citations of a few instances which are quite familiar to us illustrate how very difficult it is to narrowly define what constitutes a poison. Let us go a little further into this subject. Sometimes even an ordinarily well-known disease may be confused with the poisonous action of a noxious substance. A recent writer on toxicology mentions a case in England in the town of Middleborough where some American bacon which had been placed on an iron grating, from which emanated a gas resulting from decomposition of organic matter below, so changed the character of the bacon that many of those who ate the bacon were the victims of an attack of pneumonia. The persons who partook of this food preferred to eat it simply warmed over the fire, and not subjected to

a thorough cooking. In these cases the ordinary diplococcus of pneumonia was not found, but one which differed from it in appearance under the microscope, and which was also capable of giving pneumonia.

Canned meats are also capable of acting as food poisoning. If, in preparing these canned meats or vegetables, care is not taken to drive out all the atmospheric air by thoroughly boiling the liquid contained in the mixture, a decomposition may occur, followed by a fermentation in the organic compound, resulting in making an innoxious substance into a noxious substance. The fermentation once started in the closed can will continue for a long time under favorable atmospherical conditions. When opened, the contents may not always look, smell, or taste differently from those in a can in which no similar untoward action has taken place; and yet one can in a package may be injurious, and another wholesome. Such was the case in the American army camps during the recent Cuban war.

The scope of my paper does not permit an extended discussion of the action of poison upon our human bodies, nor would it be interesting to this audience. I would like, however, to call your attention to some of the methods by which a poison may find its way into our system.

Volatile poisons and gases may be inhaled by the lungs, and so presented to a large surface of a thin membrane tissue in which are imbedded a very minute and tenuous system of vessels filled with a rapidly circulating blood; this is greedy to absorb any vapor or gas which will not do violence to the delicate structure tissue which separates it from the air space that surrounds it, and which will not destroy its peculiar active little cells upon which its active functions depend for the grasping desire for the absorption of non-irritating volatiles. On the other hand, irritating substances of a volatile gas or vapor may by inhalation be presented to the same surface of absorptive tissue, which it may destroy by its local irritating action, the result of which will be a morbid or pathological change. It will then not absorb from the outside, and will discharge from its interior its fluids, and itself become swollen up and incapacitated from performing its function of absorption. A noxious volatile substance which will produce this effect is ammonia.

Liquid or solid substances introduced into the stomach by means of the mouth may, by its irritating effect, cause an inflammation of the mouth, throat, gullet, and the stomach itself. It may be easily understood that the irritation may be more serious than simple inflammation, and may approach that of a corrosive action, and partially destroy the lining tissue of these passages. This irritating or destructive injury may even extend to the alimentary canal beyond the stomach. This is what is technically called a gastro-intestinal irritation. The result of the corrosive and destructive effect upon these tissues may even in the first period after the ingestion of the noxious substance cause such a shock to the animal system as to cause death in a very short time. A noxious substance of this character is *strong* carbolic acid.

Returning again to the inhalation of volatile poisonous substances, I would call your attention to a certain class of these which may not irritate by their presence the absorbing surface of the lungs, and so may pass into the circulation of the blood, and from thence to the whole body. The presence of this poison within the circulation may destroy the functions of the living organs necessary to the maintenance of life. An example of this character is shown by the vapor of prussic acid. In this instance death may be almost instantaneous or within a very few minutes. There are also poisonous substances which do not provoke irritating or corrosive action upon the tissue lining the entrance to the stomach and the alimentary canal, and yet are so quickly absorbed by this channel directly into the blood circulation by the assimilating processes connected with the digestive tract as to cause death in a very short time. Poisons of this class are strychnine and morphine (so-called alkaloids of nux vomica and opium).

You may notice that I make no mention of symptoms which follow the administration of poisons, and which hardly would be in place before this audience. It is well, however, to make mention of what is well known to the physiologist; viz., that the small intestine is the great absorbent organ of the digestive tract, while the large intestine is an eliminating organ; so are also the kidneys, and the lungs by their exhalations. Consequently, the quantity of any poison which may cause injury to the living tissues in the body, and destroy their func-

tions of life, is dependent not so much upon the amount of the substance which is administered as by the quantity which is retained within the system in contact with these tissues. This is dependent on the rapidity of the elimination after the ingestion. A remarkable instance of this relation between absorption and elimination is shown by one of the poisons which I have previously named, prussic acid. Several years ago, while studying the effects of this poison upon animal life, I found that six or eight drops of a solution of this poison would destroy the life of a cat or a dog in less than a minute, while an ounce of this solution (or 240 drops) could be administered to a horse without producing any serious effect. Repetition of this dose in half-hour intervals caused slight distress, but not death. In other words, the poison was so rapidly eliminated that it was difficult to retain in his system a sufficient quantity to stop the action of the heart, which is the immediate cause of death with this poison.

In gathering and tabulating from the records on file in the Department of State in Massachusetts, a few considerations of details have occurred to me which suggests some serious as well as interesting subjects for our reflection, and for comparison with other localities. I shall take up the classified deaths from poison by suicide, accident and homicide.

The total number of deaths caused by poisons during the past twenty-four years, as shown by the vital statistics of Massachusetts, amounts in round numbers to 2,000. Of this number 1,404 were suicides, 642 were accidents and 34 were homicides.

There were

409	deaths	caused	by	suicide	from	arsenic compounds
375	"	"	"	"	"	opium preparations
136	"	"	"	"	"	carbolic acid
73	"	"	"	"	"	prussic acid and cyanides
34	"	"	"	"	"	wood (methylic) alcohol
44	"	"	"	"	"	chloroform
37	"	"	"	"	"	chloral-hydrate
32	"	"	"	"	"	corrosive sublimate (mercury)
28	"	"	"	"	"	strychnine
16	"	"	"	"	"	aconite
79	"	"	"	"	"	other poisons
141	"	"	"	"	"	illuminating gas *
Total, 1,404						

* 13 years only.

Of the deaths from accident or negligence

74	were	the	result	of	poisoning	by	opium preparations
32	"	"	"	"	"	"	arsenic compounds
22	"	"	"	"	"	"	carbolic acid
16	"	"	"	"	"	"	strychnine
11	"	"	"	"	"	"	wood alcohol
15	"	"	"	"	"	"	chloral-hydrate
9	"	"	"	"	"	"	corrosive sublimate
6	"	"	"	"	"	"	phosphorus
6	"	"	"	"	"	"	ptomaines and injurious foods
10	"	"	"	"	"	"	oil of checkerberry and wintergreen
6	"	"	"	"	"	"	chloroform
6	"	"	"	"	"	"	prussic acid and cyanides
5	"	"	"	"	"	"	ammonia
10	"	"	"	"	"	"	alcoholic substances
3	"	"	"	"	"	"	atropine
3	"	"	"	"	"	"	charcoal fumes
2	"	"	"	"	"	"	acetanilide
2	"	"	"	"	"	"	cresoline
5	"	"	"	"	"	"	aconite
4	"	"	"	"	"	"	oxalic acid
2	"	"	"	"	"	"	nitric acid
2	"	"	"	"	"	"	wild parsnip root
2	"	"	"	"	"	"	digitalis
2	"	"	"	"	"	"	fly paper
2	"	"	"	"	"	"	naphtha
3	"	"	"	"	"	"	mercury binitrate
33	"	"	"	"	"	"	other poisons
349	"	"	"	"	"	"	illuminating gas *

Total, 642

Deaths by homicide

Arsenic compounds	9
Alcohol	1
Opium preparations	3
Chloral-hydrate	1
Strychnine	2
Zinc salts	1
Turpentine	1
Oil of hemlock	1
" " cedar	1
" " tansy	1
Kerosene	1
Other poisons	12
	34

* 13 years only.

We have an opportunity of comparison of these statistics with those of a population thirteen times larger than that of Massachusetts, as shown in England and Wales, by referring to a book recently published ("Poisons: Their Effects and Detections." Third edition. London: Charles Griffin & Co. 1895). In this work Mr. Alexander Blyth gives a list of cases of individuals who have died from poison in England and Wales (6,616 persons) in ten years, 1883–92.

Poison by Suicide.

	No. Both Sexes.
Opium	497
Carbolic acid	490
Prussic acid and cyanides	344
Tartaric acid	200
Oxalic acid	138
Strychnine (nux vomica)	150
"Vermin-killer"	118
Phosphorus	84
Sulphuric acid	53
Arsenic	57
Ammonia	34
Nitric acid	27
Belladonna	20
Aconite	19
"Soothing syrup"	16
Chloroform	16
Potassic bichromate	10
Poisonous weeds	10
Other poisons	501
Total	2,784

Poison by Accident or Negligence.

	No. Both Sexes.
Lead	1,040
Opium	876
Carbolic acid	270
Chloral	111
Alcohol	105
Chloroform	98
Phosphorus	71
Hydrochloric acid	66
Ammonia	64

	No. Both Sexes.
Belladonna	56
Antimony	51
Prussic acid and cyanides	68
Strychnine and nux vomica	41
Chlorodyne	40
Aconite	40
Sulphuric acid	39
Nitric acid	25
Tartaric acid	23
Oxalic acid	23
Ether	7
Arsenic	51
Mercury	33
Sulphuric acid	39
Soda and potash (caustic)	25
Other poisons	528
Total	3,790

MURDER.

	No. Both Sexes.
Arsenic	2
Mercury	3
Sulphuric acid	1
Carbolic acid	1
Chloroform	1
Chloral-hydrate	1
Opium	6
Prussic acid and cyanides	14
Strychnine and nux vomica	8
"Vermin-killer"	1
Kind not stated	4
Total	42

In addition to the formal papers in the Health Department, the Association is indebted to Dr. Edward M. Hartwell, secretary of the Statistics Department of Boston, for some interesting remarks on "The Relation of Death Rates to Growth Rates," of which only the briefest abstract can be presented. He said in substance: Nearly thirty years ago Dr. Henry P. Bowditch of Boston, in presenting the results of his determination of the height and weight of some 25,000 pupils in the public schools of Boston, called attention to the fact that the average height of girls of the age period 11–15 years exceeded that of boys of the same age,

and that the average weight of girls of the age period 12–15 years was also greater than that of boys of the same age. Since then numerous observers in this country and abroad have corroborated Dr. Bowditch's conclusions, though the years in which the growing girl is taller and heavier than the growing boy vary somewhat in different countries.

In 1894 I had occasion to analyze the death rates of males and females dying in Boston in the age period 0–21 years in the census years 1875, 1885, and 1890. The analysis showed (1) that during the period from ten to fifteen years,—*i.e.*, when increase in height and weight is most rapid,—the death rates of Boston boys and girls attain their lowest point, and (2) that the lowest death rate is reached from one to two years earlier in the case of the girl.

The main purpose of this communication is to show that analysis of the death rates of Boston by sex and by individual years of age for the age period 0–21 years for the census years 1895 and 1900 yields similar results.

Thus it appears that the year of age in which the lowest death rate of girls fell was in the twelfth, in 1875 and 1885, and the thirteenth, in 1890, 1895, and 1900, while in the case of boys it fell in the thirteenth year in 1875, in the fourteenth in 1885, 1895, and 1900, and in the fifteenth year in 1890. In none of the census years noted did the minimum death rates of Boston boys and girls fall in the same year of age.

Dr. Hartwell used several diagrams and statistical tables in illustration of the difference between the two sexes in respect to mortality rates during the period of accelerated growth and development, and emphasized the significance of such differences in relation to school life and to certain school diseases, *e.g.*, stuttering, and spinal curvature.

Incidentally, he pointed out that the general death rate of Boston had fallen from 26.50 per thousand of population in 1875 to 20.82 in 1900, while the death rate of children under five years had declined from 111.46 per thousand for boys to 71.67 in 1900, and for girls from 102.62 in 1875 to 59.13 in 1900. For boys under one year old the rate in 1900 was 216.09 against 286.90 in 1875; and for girls under one it was 169.86 in 1900 against 263.81 in 1875. Other facts were instanced to show that there had been a marked and gratifying improvement of the public health of the city in the period 1875–1900.

III. DEPARTMENT OF JURISPRUDENCE.

In opening the session of the Department of Jurisprudence Friday evening, May 15, Hon. Charles Bulkley Hubbell, the chairman of the department, said:—

For twenty-five years the interests of this department have been directed by a gentleman whose enthusiasm and devotion have been one of the main causes of the importance and interest that have attached to its deliberations. No meeting was considered a success without the commanding and gracious presence of Judge Wayland, whose successor I have the honor to be. He was known and beloved by the bar of the country from one end of it to the other. An invitation from him to address the Association was seldom declined, and the busiest and most distinguished jurists brought us the fruitage of their best thought when summoned to our presence. Those of us who for many years have been accustomed to attend these gatherings and take an interest in the welfare of the Association will ever be grateful to Judge Wayland for his long and useful service, and will unite in the earnest hope that he may soon be restored to vigorous health.

Never before in the history of this country have we been face to face with such momentous social and legal problems as at the present moment. Some of them have already been discussed here in your presence in a most illuminating and intelligent manner. Others will be presented to-night. Our President has stated that the Department of Social Economy is the most important one included in our programme, and in many respects it is; but I would remind you that sooner or later all the questions raised have to reckon with the final "Peace, be still," of the mistress who dwells in the temple of justice and determines the affairs of men according to the principles of eternal truth and right.

The solution of the now conflicting rights of labor and capital, the racial question in the South, the limitations and supervision of great aggregations of capital, the many prob-

lems arising in our new possessions across the seas,—all these must be considered and determined by the application of the principles of that science we call jurisprudence, which are finally applied by that great tribunal that has ever possessed and now possesses the unwavering confidence of our people, and is called the Supreme Court of the United States.

1. THE RIGHT OF PRIVACY AND ITS RELATION TO THE LAW OF LIBEL.

BY ELBRIDGE L. ADAMS, ESQ., OF ROCHESTER, N.Y.

In *Scribner's Magazine* for July, 1890, there was published a suggestive paper by the late Mr. E. L. Godkin, entitled "The Rights of a Citizen to his own Reputation." After showing that society owes most of its protection from disorder and most of its moral improvement to the desire which men have of the approbation of their fellow-men, and to a corresponding fear of social condemnation, he argued that it was to the interest of the State to safeguard in every possible way the good reputation of its citizens, and to throw about their personal affairs the hedge of secrecy and privacy. He confessed, however, that it was not easy to say in what way the privacy of the individual might be secured by law further than it is now secured to him by the law of slander and libel, and concluded that press laws, more than any others, have to be supported, not merely by the opinions, but by the manners of the community.

The difficulty, which seemed insurmountable to the journalist, presented itself with all the attractiveness of a problem to be resolved in the crucible of the common law to two lawyers of this city of Boston. In October of the same year there appeared in the *Harvard Law Review* an article by Messrs. Louis D. Brandeis and Samuel D. Warren, which, in originality of conception, in facility of reasoning, and in the results to which it has led is one of the most brilliant excursions in the field of theoretical jurisprudence which the recent literature of the law discloses.

Their argument, briefly summarized, was that political, social, and economic changes entail the recognition of new rights, and of new remedies to secure those rights, which the common law, in its eternal youth, expands to meet. Because of this growth, this continual adoption of new principles to meet new experience, the law never becomes entirely

consistent and stable. Its roots reach back into the past, and its new blooms are budding while yet the old wood is being sloughed off. As Mr. Justice Oliver Wendell Holmes has put it, in his fascinating study of the historical development of the common law:—

> The life of the law has not been logic. It has been experience. The felt necessities of the times, the prevailing moral and political theories, the intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than syllogism in determining the rules by which men should be governed.

This development of the law has been slow, and necessarily so, for it always takes time to supplant old ideas with new ones; but it has always been progressive. There was a time when the law afforded a remedy only for actual battery of a man's body. That was the time when the right to life and liberty meant simply the right to be free from actual physical harm. Afterward, when the intellectual and emotional nature began to receive recognition, and man was regarded as a psychological as well as a physical entity, the law took cognizance of the sensations, thoughts, and emotions. Out of the action of battery grew that of assault; and a threatened attempt to do injury, unaccompanied by physical violence to the body of another, was a cause for damages. So the law of nuisance was developed from the law of trespass, to protect a man against offensive odors, noises, dust, and smoke; and the law of slander and libel arose to redress injuries to a man's reputation in the community. In like manner the law relating to property grew from the simple protection of the lands and cattle and other tangible property of the individual, to the elaborate modern devices to secure to him the products of his mind as reproduced in literature and art, trade secrets, and good-will. For years there has been a feeling that the law ought to redress not only invasions of a man's property rights, but also his right to privacy, or his right to be let alone. The portrayal in the newspapers of all the details of one's private or domestic life, the taking and vending of instantaneous photographs, the caricaturing of public men in cartoons, the publicity given by ambitious and unprofessional medical

men to wonderful surgical operations, the use of a man's name for advertising purposes and of his body for anatomical purposes,—all these things are quite annoying to sensitive people, and deservedly call for censure.

The question is, How shall these infractions of decency and propriety be prevented by the law? The law of libel is not sufficient to accomplish that end, because it deals only with material wrongs,—damage to the reputation; while the invasion of the right of privacy is a spiritual wrong,—damage to one's own feelings. But, while it is true that our law recognizes no principle upon which compensation can be granted for mere injury to the feelings, it is argued that an injunctive remedy can be had upon the analogy of cases dealing with rights in intellectual and artistic property.

The common law [so the argument runs] secures to each individual the right to determine, ordinarily, to what extent his thoughts, sentiments, and emotions shall be communicated to others. Under our system of government he can never be compelled to express them, except upon the witness-stand; and, even if he has chosen to give them expression, the law generally recognizes his power to fix the limit of the publicity which shall be given them. The existence of this right does not depend upon the particular method of expression adopted. It is immaterial whether it be by word or by sign, in painting, by sculpture, or in music. Neither does the existence of the right depend upon the nature or value of the thought or emotion, nor upon the excellence of the means of expression. The same protection is accorded to a casual letter or an entry in a diary and to the most valuable poem or essay; to a botch or daub and to a masterpiece. It may exist independently of any corporeal being, as in words spoken, a song sung, a drama acted.

It is admitted that the basis of the right to prevent the publication of manuscript or works of art is found by the courts in the right which every man has to his own property, the conscious product of his labor; but the courts are criticised for basing their decisions upon property or contractual rights in cases where the value of the production is not in the right to take the profits arising from the publication, but in the peace of mind and relief afforded by the ability to prevent any publication at all.

A man records in a letter to his son, or in his diary, that he did not dine with his wife on a certain day. No one into whose hands those papers may fall could publish them to the world, even if possession of the documents had been obtained rightfully; and the prohibition would not be confined to the publication of a copy of the letter itself, or the diary entry. Restraint extends also to the publication of the contents. What is the thing which is protected? Surely not the intellectual act of recording the fact that the husband did not dine with his wife, but the fact itself.

Many English cases, especially that of *Prince Albert* v. *Strange*, in which the defendant was restrained from publishing some etchings which the Prince and Queen Victoria had made for their own pleasure, are analyzed and cited as authorities for the proposition that there has been judicial recognition of a legal right to privacy; and the authors of the article conclude that, notwithstanding the tendency of the courts to rest their decisions upon property rights, the protection afforded to thoughts, sentiments, and emotions, expressed through the medium of writing, printing, or of the arts, so far as it consists in preventing the publication, is like the right not to be assaulted or beaten, and that the principle involved is not the principle of private property, but that of an inviolate personality.

This theoretical exposition of the law was contested by a writer in the *North-western Law Review* (vol. iii. p. 1), who dealt with the subject from the practical standpoint. He maintained that the right of privacy does not exist as a legal right, and that the arguments in favor of its existence are based upon a mistaken understanding of the authorities cited in its support; that equity has no concern with the feelings of the individual or with considerations of moral fitness, except as any inconvenience or injury that a person may suffer is connected with the enjoyment or possession of property. The writer pleads for the application of new remedies to meet the exigencies of modern life upon the basis of settled principles of law, and not upon considerations of conscience, propriety, or moral fitness.

Once cast aside [he says] the fundamental principle of English law,—precedent,—and make the administration of jus-

tice dependent upon the conscience and sense of equity of the judge who hears the case, and there will be banished from our law that certainty and definiteness on which are built the property rights of the people.

The controversy thus commenced in legal periodicals soon passed into the forum of the courts. In 1892 some of the family of Mrs. Mary Hamilton Schuyler, who was conspicuous in her lifetime for her philanthropic work, attempted to prevent the exhibition, at the coming Columbian Exposition, of a statue of Mrs. Schuyler, intended to typify "Woman as a Philanthropist," alongside of a companion piece, a statue of Miss Susan B. Anthony, intended to represent "Woman as a Reformer." They asserted that the projected memorial was disagreeable and obnoxious to them, because it would have been so to Mrs. Schuyler, if living, and that it was annoying to have her memory associated with principles which Miss Anthony professed and which Mrs. Schuyler did not approve.

The action was avowedly suggested by the article in the *Harvard Law Review* already referred to; and the decision of the courts of original and intermediate jurisdiction, granting the relief askd for, was distinctly placed upon the theory advanced in that article. The action was, however, dismissed in the court of final resort upon the ground that the relations of Mrs. Schuyler did not represent any right of privacy which she possessed in her lifetime, and that, whatever her right had been in that respect, it died with her. The court was also inclined to the view that the grievance was too trivial to excite any real mental distress or injury; but it carefully avoided any definite decision of the question whether there was or was not such a legal right as the right of privacy.

The question next came up for adjudication in Michigan, and the Supreme Court of that State found no difficulty in deciding that a widow could not enjoin a manufacturer of cigars from using the name and portrait of her late husband to designate a brand of cigars. The court said in its opinion:—

Society may be depended upon to make proper allowances in such cases; and, although each individual member may, in his own case, suffer a feeling of humiliation when his own

name or that of some beloved or respected friend is thus used, he will, usually in the case of another, regard it as a trifle. So long as such use does not amount to a libel, we are of the opinion that the individual would himself be remediless, were he alive, and the same is true of his friends who survive him. . . . This law of privacy seems to have gained a foothold at one time in the history of our jurisprudence, not by that name, it is true, but in effect. It is evidenced by the old maxim, "The greater the truth, the greater the libel"; and the result has been the emphatic expression of public disapproval by the emancipation of the press and the establishment of freedom of speech, and the abolition, in most of the States, of the maxim quoted by constitutional provisions. The limitation upon the exercise of these rights is the law of slander and libel, whereby the publication of an untruth that can be shown to be injurious, not alone to the feelings, but to the reputation, is actionable. Should it be thought that it is a hard rule that is applied in this case, it is only necessary to call attention to the fact that a ready remedy is to be found in legislation.

The question was again presented in a case in the Federal Court, arising in the Massachusetts district, in which the widow of Mr. Corliss, the inventor, endeavored to restrain the publication of the biography and picture of her husband, upon the distinct ground that it was an invasion of her right of privacy. The court denied the relief sought, saying:—

Freedom of speech and of the press is secured by the Constitution of the United States and the constitutions of most of the States. This constitutional privilege implies a right freely to utter and publish whatever the citizen may please, and to be protected from any responsibility for so doing, except so far as such publication, by reason of its blasphemy, obscenity, or scandalous character, may be a public offence, or by its falsehood or malice may injuriously affect the standing, reputation, or pecuniary interests of individuals. In other words, under our laws one can speak and publish what he desires, provided he commit no offence against public morals or private reputation.

In England a case was recently brought by a physician to restrain the publication of an advertisement of a patent medicine, in which it was stated, with substantial truth, but without his authority, that the physician had been prescribing defendant's patent gout cure, and using it himself, with

good results. The English Court of Appeals unanimously decided that the physician suffered no legal wrong for which the courts could give him a remedy, so long as it did not appear that either his reputation or his property had been injured.

More recently the whole subject has come squarely before the New York Court of Appeals in the case of *Roberson* v. *The Rochester Folding Box Company and the Franklin Mills Company.* The facts in that case were these: A lithographic company had printed and a milling company had circulated, as an advertisement of its flour, some prints upon which appeared the profile likeness of a young woman, above which were the words "Flour of the Family," and below, the name and address of the milling company. A young woman, claiming to be the original of the portrait, brought suit against both the maker and user of the advertisement, claiming that she had been greatly humiliated by the scoffs and jeers of persons who had recognized her features in the picture, and that she had been made sick, and had been put to the expense of employing a physician, by reason of which she had suffered large pecuniary damage. She prayed to be compensated for the injury, and also asked for an injunction restraining the further circulation of the picture. Her complaint contained none of the averments of an action for libel,—namely, a malicious or false publication and defamation of character or reputation; nor did it allege that the picture had been obtained through a breach of contract. The relief sought was grounded solely upon the proposition that the circulation of the advertisement, without the complainant's consent, constituted an invasion of her right of privacy.

A demurrer was interposed to this complaint; but it was overruled by the lower courts, which, regarding the question as an open one in the State of New York, and not feeling bound by the decision of the Supreme Court of Michigan, held that there was a legal and actionable right of privacy which had been invaded. These decisions were, however, overruled by the Court of Appeals, which examined the whole question in the light of both principle and authority, and reached the conclusion, by a divided court, that the right of privacy does not exist in law. The court made the following observation:—

While most persons would much prefer to have a good likeness of themselves appear in a responsible periodical or leading newspaper rather than upon an advertising card or sheet, the doctrine which the courts are asked to create for this case would apply as well to the one publication as to the other; for the principle which a court of equity is asked to assert in support of a recovery in this action is that the right of privacy exists and is enforceable in equity, and that the publication of that which purports to be the portrait of another person, even if obtained upon the street by an impertinent individual with a camera, will be restrained in equity on the ground that an individual has a right to prevent his features from becoming known to those outside of his circle of friends and acquaintances. If such a principle be incorporated into the body of the law through the instrumentality of a court of equity, the attempt logically to apply the principle will necessarily result not only in a vast amount of litigation, but in litigation bordering upon the absurd; for the right of privacy, once established as a legal doctrine, cannot be confined to the restraint of the publication of a likeness, but must necessarily embrace as well the publication of a word-picture, a comment upon one's looks, conduct, domestic relations or habits. And, were the right of privacy once legally asserted, it would be necessarily held to include the same things if spoken instead of printed; for one as well as the other invades the right to be absolutely let alone. An insult would certainly be in violation of such a right, and with many persons would more seriously wound the feelings than would the publication of their pictures. And so we might add to the list of things that are spoken and done, day by day, which seriously offend the sensibilities of good people, to which the principle which the plaintiff seeks to have imbedded in the doctrine of the law would seem to apply.

This decision excited much discussion all over the world. It has been made the subject of comment in newspapers and periodicals, both at home and abroad, and societies of jurisprudence and law schools have debated it. Curiously enough, the newspaper press, apparently unmindful of its own delinquencies in respect to a decent regard for the private rights of individuals, has almost unanimously disapproved of the decision. One prominent New York journal went so far in its editorial condemnation of the ruling of the court that one of the judges, who voted with the majority of the court, felt called upon to defend the decision in an article contributed to a law review. He said:—

If the time should ever arrive when a judicial decision which rests so firmly upon sound principles and safe precedents can be regarded as the direful spring from which all the woes and evils described in the above article flow, our notions with respect to the proper duties and functions of the judge must be subjected to a radical change. It will then be his duty, instead of seeking to apply principles and precedents to ever-varying facts, to keep his ear to the ground, or watch the direction of the popular breeze. Fortunately, no such result need be anticipated. The learning and conservative tendencies of the bar and the good sense of the people will prevail over any temporary errors that the press may commit. . . . If it be true, as suggested in the article quoted, that the decision there referred to excited as much amazement among lawyers and jurists as among the promiscuous lay public, it is not only possible, but probable, that such a view was not founded upon a careful study of the question, but was the result of a mere superficial impression.

The press is a great educator of the people, and its discussion of questions of law decided by the courts is often productive of much good. It is perhaps better that judicial decisions should be publicly discussed, even though the comments are unfair or misleading, than that they should be entirely ignored. Any argument to show that the decision which is criticised in the articles quoted from is contrary to settled principles or a departure from precedent would be useful; but really all that has been said, or can be said, about it comes to this: The court should have thrown principle and precedent to the wind, and laid down an arbitrary rule applicable to that particular case, without regard to the effect of such rule upon other cases where perhaps the facts might be slightly different. Such decisions tend generally only to confuse the law. When a court embarks in the business of making new law to suit a particular case, it is difficult to stop, as one decision generally furnishes argument for another. It is easy enough to wander away from beaten paths that are safe, but it is not always easy to return. The argument *ad hominem* is often a taking one; but it more frequently misleads than clarifies the mind, and is generally made use of as a last resort. Hence it is suggested that, had the plaintiff in the case referred to been the daughter of the judge, the decision might have been the other way. That argument doubtless has some weight with the "promiscuous lay public," although it really imputes to the judges rather a low standard of integrity, since it contains the suggestion that their decisions may be controlled by their private interests or personal affections. There is, of course, no intention to convey any such idea. It is only an obvious defect

in methods of reasoning. What may be imagined that a judge would or would not do if his daughter's case could come before him, if even such a thing were possible, is not pertinent in any inquiry as to what the law actually is on any particular question, since law does not proceed from the private feelings of the judge.

There has been much misapprehension as to the precise question which the Court of Appeals decided in the Roberson case. It did not decide that one whose picture has been used by a photographer or other person, in breach of an implied contract, was without a remedy. It did not decide that, in every case where a picture is circulated against the will of the original, he is without a remedy. Indeed, it pointed out that there are provisions in the penal code of New York, and of many other States, punishing a malicious publication by picture, effigy, or sign, which exposes a person to public contempt, ridicule, or obloquy, as a libel, and said:—

There are many articles, especially of medicine, whose character is such that using the picture of a person, particularly that of a woman, in connection with the advertisement of those articles, might justly be found by a jury to cast ridicule or obloquy on the person whose picture is thus published. The manner or posture in which the person is portrayed might readily have a like effect. In such cases both a civil action and a criminal prosecution could be maintained.

What the court decided, and all that it decided, was that there is no such thing, within the history or principles of jurisprudence, as a right of privacy which will restrain an unauthorized publication which is merely offensive to the feelings, and which does not injure the property or the reputation.

The Court of Appeals might have decided otherwise; but any other decision would have opened up entirely new paths in the field of applied jurisprudence, which would have led to many and unforeseen complications and difficulties. For one thing, it would have been an innovation upon the well-settled principle of law which refuses to take cognizance of mere sentimental injuries. The maxim, which is the boast of the common law, that there is no wrong without a remedy, refers, of course, to legal wrongs, and not to those that offend

merely against good morals or good taste. All men are not possessed of the same delicacy of feeling or of the same consideration for the feelings of others. Some men are sensisitive, and suffer keenly from the publicity and notoriety which others, more callous, will invite and welcome. Manifestly, the law cannot make a right of action depend upon the sensitiveness of the person injured. Mere injury to the feelings has never been recognized as affording ground for action, although, when an injury of which the law does take cognizance has been done, injury to the feelings may be taken into consideration on the question of damages. Our law, unlike the Roman law, does not afford a remedy even for mental suffering resulting from contumely and insult, nor for an intentional and unwarranted violation of the honor of another.

There are many wrongs that are most aggravating and reprehensible that the law does not pretend to redress. Some of the conditions on which the happiness of life and the well-being of society depend are not, and cannot, be the subject of positive law. Nor can they be enforced by any human tribunal. The law leaves the feelings to be soothed and vindicated by the tremendous force of sympathy.

Another difficulty would have been to determine the precise limits of privacy. The judges who have written on the subject have not been in agreement upon this point. Thus, in the Corliss case, Judge Colt said:—

I cannot assent to the proposition that Mr. Corliss was a private character. He held himself out to the public as an inventor, and his reputation became world-wide. He was a public man in the same sense that authors or artists are public men. It would be a remarkable exception to the liberty of the press if the lives of great inventors could not be given to the public without their consent while living, or the approval of their family when dead. A statesman, author, artist, or inventor, who asks for and desires public recognition, may be said to have surrendered this right to the public. When any one obtains a picture or photograph of such a person, and there is no breach of contract or violation of confidence in the method by which it was obtained, he has a right to reproduce it, whether in a newspaper, magazine, or book. It would be extending this right of protection too far to say that the general public can be prohib-

ited from knowing the personal appearance of great public characters.

Judge Van Brunt, however, in the Schuyler case, said:—

I cannot subscribe to the doctrine that, if Mrs. Schuyler had been a public character, this motion should have been denied. The claim that a person who voluntarily places himself before the public, either by accepting public office or becoming a candidate for office, or as an artist or literary man, thereby surrenders his personality while living, and his memory, when dead, to the public, to be used or abused as any one of that irresponsible body may see fit, cannot for a moment be entertained. It is undoubtedly true that by occupying a public position or by making an appeal to the public a person surrenders such part of his personality as pertains to or affects the position which he fills or seeks to occupy, but no farther. And, certainly, his memory, when dead, does not necessarily thereby become public property.

The distinction between public and private characters cannot possibly be made except by an arbitrary legislative enactment. It is to be feared that a judicial determination that all public characters are embraced within the classification of Judge Colt,—namely, "statesmen, authors, artists, and inventors,"—and that every one else is a private citizen of whom we must speak with bated breath, and from whom the newspapers must steer clear, would come with a shock to a great many people who have deluded themselves with the belief that they are public characters, entitled to all the honors and subject to all the inconveniences that attach to such celebrity.

The President is undoubtedly a public character, and his pictures, whether they are such as he would choose for publication or not, may be freely printed; but what of the President's family? Are his wife and his children, his man-servant and his maid-servant, his cattle, and the stranger that is within his gates, all liable to pay the penalty of his greatness?

But perhaps the most important corollary of a contrary decision in the Roberson case would have been the virtual extension of the law of libel. No valid distinction in principle would seem to exist between the unauthorized publication of a picture and any other publication whereby a person

is brought into undesired publicity. It is immaterial whether the printed characters used to describe him are the letters of the alphabet grouped into words or lines and dots grouped into a picture. A paragraph in a newspaper which should, in words, minutely and vividly describe the personal appearance of a woman in such a way that all her friends would recognize the description, might be quite as objectionable to her, and quite as serious an invasion of her right of privacy, as a publication of her photograph. The newspapers, concededly, have the right to print information about people, so long as it is not defamatory, without any legal liability. Some merely curious incident in a man's life may be seized upon by a reporter with the result that for the time being he is the most conspicuous person in the country. Yet, according to our present notions of the law of libel, no cause of action would accrue to him thereby, unless his character has been defamed. It makes no difference how much he may dislike the publicity, or how greatly he may be pained by it, or even how much he may be financially damaged by it. The fact of publicity alone will give him no right of action. Freedom of speech and of the press are secured by the Constitution. This constitutional privilege implies a right to speak and publish what one chooses about his neighbor, provided he commit no offence against public morals or private reputation.

The New York court of last resort, like the Federal Court and the courts of Michigan and of England, was unwilling to take upon itself the responsibility of extending the law of libel beyond the well-fixed limitations which several centuries of judicial pronouncement have determined. It turned the whole matter over to the legislature, and there it must finally be adjusted. The practical question, therefore, seems to be, How far may the legislature, within the limitations of the Constitution, restrain the growing license of the press?

It will probably not be seriously questioned that the American newspaper press, with a few honorable exceptions, has far overstepped the bounds of decency and propriety in its portrayal by word and by picture of the private life of individuals. It is one of the things which foreigners most quickly remark and condemn. Doubtless it is one of the products of

democracy. It is not a blight of recent times. Benjamin Franklin inveighed against it in 1789. He called the press "The Supremest Court of Judicature of Pennsylvania," and said of its power:—

It may receive and promulgate accusations of all kinds against all persons and characters among the citizens of the State, and even against all inferior courts, and may judge, sentence, and condemn to infamy not only private individuals, but public bodies, with or without inquiry or hearing at the court's discretion. This court is established in favor of about one citizen in five hundred, who by education or practice in scribbling has acquired a tolerable style as to grammar and construction. This five-hundredth part of the citizens has the privilege of accusing and abusing the other four hundred and ninety-nine parts at their own pleasure, or they may hire out their pens and press to others for that purpose.

If the "Father of American Printing" could see the Sunday edition of some of our metropolitan dailies, he might almost wish that he had not introduced the art of printing into our land.

Is there anything which shakes one's faith in popular education so much as the fact that a market can be found for this dreadful stuff? When one realizes that several millions of copies of these lurid sheets find their way into the homes of as many Americans citizens, where they are read by perhaps five times as many readers on the one day in the week which is devoted to rest, one wonders what the effect will be upon American manhood. That such literature results in a lowering of social standards and of morality, that it belittles and perverts the understanding, vulgarizes the tastes, and dwarfs the thoughts and aspirations of the people, cannot be gainsaid.

Curiosity about our neighbors, the desire to know what they are doing and saying, is one of the commonest of human failings. There is a story of a traveller in a Western mining town, who pinned his shirt across the open window of his hotel to screen himself, while performing his toilet, from the loungers on the piazza. After a few minutes the improvised curtain was thrust roughly aside by a hand from the outside, and a voice was heard asking, "We want to know what there is so darned private going on in there?" The story readily

illustrates one of the commonest traits of gregarious mankind, though not, it must be admitted, one of its most admirable. The product of this curiosity is gossip, which, so long as it is amiable, is not more harmful than many another innocent employment of the idle. When, however, gossip ceases to be the idle prattle of an idle hour, and, raised to the dignity of print, becomes the daily food of the multitude, it may well be questioned if it does not result in a lowering of social standards and the destruction of all delicacy of feeling. It demoralizes the people as a whole. The effect of it upon the individual is also different. So long as he is talked about by his neighbors, he is usually spared the mortification of knowing it; but, when his foibles, his family secrets, the amount of his income, what he eats and drinks and how he passes his leisure hours, are printed in the newspapers and published broadcast through the community, he knows that his neighbors know, and, if he be a man of fine sensibilities, he feels a natural resentment. When the gossip about him descends to the talk of the kitchen, and his relations toward his wife, or some one else's wife, his mistakes, his infirmities, and the indiscretions of his youth, are paraded before a prurient public, his indignation rouses primitive instincts, and he sometimes horsewhips the editor, or, in less refined parts of the country, shoots him in his sanctum. If he be a law-abiding citizen, having his passions under control, he may consult his lawyer, from whom he will receive the cold satisfaction of knowing that the law does not redress such injuries.

Is it, then, possible, is it even advisable, that the legislature should attempt to regulate this sort of thing?

In France they have had for years a law which forbids and punishes the publication in a public journal, without consent, of any fact of private life. A man can prevent the mere mention of his name in any disagreeable connection, or have satisfaction is the publication has been made. But in France the law on this subject is supported by a sensitiveness to ridicule or insult which has never existed in an Anglo-Saxon country.

In the State of California, which is quite as progressive in the science of law-making as any State in the Union, there

was placed upon the statute books in 1899 an amendment of the code relating to criminal libel, which reads as follows:—

It shall be unlawful to publish in any newspaper, handbill, poster, book, or serial publication, or supplement thereto, the portrait of any living person, a resident of California, other than that of a person holding a public office in this State, without the written consent of such person first had and obtained; provided that it shall be lawful to publish the portrait of a person convicted of a crime. It shall likewise be unlawful to publish in any newspaper, handbill, poster, book, or serial publication, or supplement thereto, any caricature of any person residing in this State, which caricature will in any manner reflect upon the honor, integrity, manhood, virtue, reputation, or business or political motives of the person so caricatured to public hatred, ridicule, or contempt.

A violation of this section shall be a misdemeanor, and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than one month nor more than six months, or by both such fine and imprisonment.

All persons concerned in said publication, either as owner or manager, editor or publisher, or engraver, are each liable for said publication. Actions for the violation of this section shall be tried in the county where such newspaper, handbill, poster, book, or serial publication, or supplement, is printed, or has its publication office, or in the county where the person whose portrait or caricature is published resides at the time of the alleged publication.

The second section requires that every article, statement, or editorial contained in any newspaper or other printed publication, published in California, which tends to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation, or to publish the natural or alleged defects of one who is alive, and thereby expose him or her to public contempt, hatred, or ridicule, must be supplemented by the true name of the writer of such article, statement, or editorial, signed or printed at the end thereof, subject to a penalty of one thousand dollars for each offence, to be recovered in a civil action.

A critical examination of this statute discloses several defects in it. In the first place, it is obvious that it will not and was not designed to afford protection against the publication of one's private and domestic affairs. It would not,

for instance, prevent a newspaper from printing all the prurient details of a family scandal or a divorce suit. It relates only to pictures, caricatures, and criminal libels. The exception of persons holding public office from the provisions relating to pictures should be extended to include candidates for public office; and there should obviously be a proviso that persons who have themselves voluntarily dedicated their features to the public by some act of publication are not within the protection of the act.

It is not plain that any good purpose can be accomplished by requiring the writer of a libellous article to append his name to it, since the proprietor of a newspaper is responsible for everything it contains. It is said that about the only paper in California which has respected the requirement is one which has very rarely, if ever, been guilty of publishing a libel. The law remains practically a dead letter.

In the State of New York a recent amendment of the penal code makes it a misdemeanor to publish any private letter, telegram, or papers found on the person or among the effects of one who has committed suicide, or who has been found dead, with certain exceptions in the interest of the detection of crime. I have not observed that the statute is respected by the newspapers, and I have heard of no prosecutions under it. It is another dead letter.

On the 7th of April last, in that State, there became a law, with the approval of the governor, "An Act to prevent the Unauthorized Use of the Name or Picture of any Person for the Purposes of Trade." It was obviously suggested by the decisions of the Court of Appeals in the Roberson case. It reads as follows:—

SECTION 1. A person, firm, or corporation that uses for advertising purposes, or for the purposes of trade, the name, portrait, or picture of any living person without the written consent of such person first obtained is guilty of a misdemeanor.

SECTION 2. Any person whose name, portrait, or picture is used within this State for advertising purposes, or for the purpose of trade, without his written consent first obtained, may maintain an equitable action in the Supreme Court of the State against the person, firm, or corporation so using his name, portrait, or picture, to prevent and restrain the use

thereof, and may also sue and recover damages for any injury sustained by reason of such use; and, if the defendant shall have knowingly used such person's name, portrait, or picture in such manner as is forbidden or declared unlawful by this act, the jury in its discretion may award exemplary damages.

This act, it is plain, applies only to advertisers. No good reason is apparent why there should be one law for the person advertising flour and another law for the person advertising a newspaper. It is surely quite as offensive to the individual to find his picture in a disreputable newspaper, in connection with some disagreeable incident, as to see it placarded on the bill-boards in connection with some article of commerce. This law goes but a short step in the direction of protecting the right of privacy. But there is one quite serious defect in the law as it stands. Any use, for advertising purposes, of a picture or portrait, although it may be perfectly innocent, and with no knowledge of the fact that it is the picture of any living person, will entitle the person who can prove to the satisfaction of a jury that it is his or her likeness to recover damages, and, if "knowingly used," to punitive or exemplary damages. If, therefore, an artist makes a sketch, which is purely a work of imagination, and the same is used to advertise a brand of soap, some woman (perhaps some half-dozen women in different parts of the State) who happens closely to resemble the picture may persuade a jury that she is the original and receive substantial damages. Such likenesses are not uncommon. In a recent case in New York one Mary Louise Clary-Squire sued the Press Publishing Company for libel, based upon the publication in defendant's newspaper, in connection with an account of the marriage of one Louise Cleary with Eugene Cowles, a picture said to be that of "Mrs. Louise Cleary Cowles," but which the plaintiff claimed to be her own likeness. It was a fact that a Miss Louise Cleary had married Eugene Cowles upon the day named. The court left it to the jury to say whether the picture that was published was in fact the picture of the plaintiff. Several of the plaintiff's photographs were introduced in evidence, and also one of Miss Cleary. The judge said, "So far as we can see from an inspection of the exhibits, the picture published was as good a representation of one as

of the other." The jury found that the picture published was not that of plaintiff; but they might have found, on the evidence, that it was, although such was not the fact, and the defendant might have been compelled to pay damages to the wrong woman.

An act which considerably extends the rules of libel at common law has been passed by the Pennsylvania legislature, and is now, I believe, before the governor of that State for his approval.

It is evident, therefore, that there is a growing demand on the part of society for some protection in law against the violation of the right of privacy. The idea is an attractive one to the social reformer; but to the law-maker, who seeks to embody the idea into a statute, the subject is surrounded with serious difficulties. On the one hand, he must see to it that such a statute is general, and is made to operate upon all, and to protect all alike. Advertisers, newspapers, and periodicals of all kinds must be brought within its purview. On the other hand, he must avoid conflict with the constitutional guaranty of the freedom of speech and of the press. He must define in some way who are private persons, and must make exceptions which will permit a free and untrammelled discussion of the fitness and capacity of candidates for public office and of those holding public office.

In the opinion of able judges and journalists, it is impossible to frame such a statute as will remedy the evil complained of. Judge O'Brien, of New York, says:—

> It is quite certain that it would operate in so many directions and cover so many cases that the law-makers never thought or heard of that it would have to be repealed at the next session.

Judge Brown, of the Supreme Court, says:—

> It is exceedingly doubtful if any legislation be practicable which shall tend to restrict the excessive license indulged in by newspapers. Of course, a censorship is not to be thought of in a free country. We can imagine a censorship which, without repressing the freest discussion of political and social questions, and the claims of candidates to the suffrages of the people, might repress much that is indecent, coarse, and libellous; but, in the practical administration of such a law,

the abuses would soon outnumber the advantages. The same remark might be made of any other legislation upon the subject. As already stated, the law of libel affords a nominal remedy; and, if its administration be ineffectual, the same difficulties would probably attend the enforcement of a more rigorous statute. Such a statute, too, could hardly fail to operate as an infringement upon the liberty of the press.

Mr. Godkin said:—

There is only one remedy for violations of the rights of privacy within the reach of the American public, and that is an imperfect one. It is to be found in attaching social discredit to invasions of it on the part of conductors of the press. At present this check can hardly be said to exist. It is to a large extent nullified by the fact that the offence is often pecuniarily profitable.

These are high authorities, and their opinion is entitled to much weight. It may not be impossible to frame a comprehensive, effective, and constitutional law of privacy; but it is certain that no such law has yet been suggested by the advocates of it.

2. REFORM IN PENAL LAW.

BY THE HON. CHARLTON T. LEWIS, OF NEW YORK.

[Abstract of address.]

The greatest good of the greatest number (that is, the highest welfare of society at large) is supposed to be the aim of legislation. Every political doctrine or measure of policy is advocated or opposed, as it is believed to conduce to this end.

But penal laws are an exception. In dealing with crime, the custom is to consider, not the effect of the law upon the community in general, but rather the supposed deserts of the offender. In our penal codes an effort is made to measure out punishments according to guilt. As far as legislation on this subject embodies any principle, it is that of retribution, of rendering to each man the fit recompense for his deed.

The two ends are incompatible. The aim to render retributive justice and the aim to protect the community by eliminating crime are entirely distinct. They would inspire very different systems of law and administration. The traditional system, founded on retribution, has had a full trial. How has it succeeded?

It has proved, on the whole, a failure. In the first place, it attempts the impossible. No such thing is within the province or the power of government as the measurement of guilt and the assignment of proportional penalties. The vanity of the attempt would be palpable and startling, but that custom has made it so familiar. It is only by making statute law a fetich, and blinding ourselves to the absurdity of its empty phrases, that we can read with respect its definitions of the acts and circumstances which constitute any crime, such as robbery, and its solemn enunciation of sundry years of imprisonment as a punishment due the robber. If the unreasonableness of such laws were not obvious on their face, it would be made impressive by comparing them together. Each penal code tries to discriminate between the demerits of different crimes, and the results are striking.

For example, in Delaware a counterfeiter may be imprisoned for at most three years, and in New York for life; burning a building not a dwelling calls for four years or less in prison in Kansas, but is punished with death in Delaware; forgery is four times as great a crime as larceny in Kansas, but larceny is four times as great a crime as forgery in Connecticut; the actual average sentence for perjury is ten times as long in Florida as in Maine; that for incest is fifteen times as long in Louisiana as in Pennsylvania; that for bigamy is thirteen times as long in Minnesota as in Montana; that for rape is seventeen times as long in New Mexico and twelve times as long in Texas as in Louisiana; that for robbery is twelve times as long in Alabama as in Delaware, and nineteen times as long in Arizona as in California.

Thus there is no relation whatever between the real guilt of crimes and the penalties awarded. In the nature of the case there can be none. Desert is personal, attached not to a single act, but to character and life. Moreover, the penalty itself cannot be measured by time. To one prisoner the humiliation and suffering of a day in prison is a keener affliction than the life term of another.

The fundamental vice of the system is the selection of the aim. The end in view is made punishment according to desert, and is impossible of attainment. The interest of society demands that the aim in penal law, as in all law, be made the good of the community. Its purpose should be to do away with crime.

Reform in penal law means the substitution of this principle for the traditional theory of retribution. Let every law and administrative agency be directed to the protection of society, the prevention of those invasions of rights and of morals which constitute criminality.

In this light the subject is now studied by scientific inquirers. But the study is recent and as yet incomplete. Certain conclusions are gradually emerging into acceptance, and obtaining the sanction of experience where they are tested. Nowhere has the conception of retribution been discarded from a system of penal law. But it has been qualified and largely reduced in scope in many States and nations, with results which justify great hopes for the future. The imme-

diate consequence is confusion in the logical form of our codes, which are left without a controlling principle. The transition to a rational system awaits only the education of the popular intelligence to the true interests of society.

Many jurisdictions are already awake to the necessity and value of proper agencies for preventing crime, for rescuing from a criminal career the young who are in danger of entering it. General education, many of our best public charities, and the vast extension of juvenile reformatories in recent years are evidences of progress in this respect. Preventive work against crime, as against disease, is always the most fruitful.

In dealing with actual offenders, less improvement has been made. We still rely on imprisonment as practically the only treatment applicable to them. Fixed terms of confinement are still awarded for named offences. But this anomaly in law and social practice cannot be permanent. With the welfare of society as the end in view and discarding the antiquated folly of retributive justice, no man should be imprisoned unless it is necessary for the protection of the community. But, if it is necessary, he must be confined while the necessity lasts.

This is the principle of the indeterminate sentence. It revolutionizes the practice of penal administration. It gives hope to the prisoner, a motive to form habits of industry and good conduct, by patient labor and submission to discipline to earn his release. The key to his prison is in his own pocket. The partial and imperfect trial which this principle has had in Massachusetts and New York during twenty years past has proved its value. The proportion of prisoners discharged, who thereafter live reputable lives, has been multiplied. The number who had entered the road to permanent and habitual criminality, and have been rescued from it, form a large proportion of all the offenders subjected to it.

In short, the reformatory discipline, with the sentence terminable only by good conduct and satisfactory promise of reform, as tried at Elmira and Concord, has proved the greatest and most beneficial revolution in the system of penal law ever devised.

But a still larger, more fundamental principle has been

introduced by Massachusetts in the probation law. The vast majority of those guilty of law-breaking, who by the traditional system are sent to jail, are not in reality proper subjects for imprisonment. There is no danger to society from their freedom. To set them free, under proper supervision, kindly guidance, and helpful advice, with the pressure of strong motive, is the work of the probation law. It is capable of indefinite extension in practice.

Let the community learn to accept its responsibility for the erring, and itself become the probation officer's support and aid, as fully as every civilized community is already the aid and support of its police in watching against public disorder, and prisons can be largely disused. The abuse of prisons and jails is a chief reproach of our civilization. The substitution for them of better agencies for the conciliation of such offenders as are not hopeless is the end to which probation laws must look, and which seems to be largely possible.

But the true criminal, the habitual or congenital enemy of society, must be disarmed; and the true use of prisons is to entomb this small class not for a year or a fixed term, then to be released to prey on mankind, but permanently, as long as the character is unchanged.

The supreme interest of society in penal law is in the logical and complete incorporation with our codes of the true principles of reform, rejecting all attempts at punishment, and directing all agencies and efforts to the elimination of crime.

The discussion which ensued was confined to the address of Mr. Lewis, and the participants referred more or less directly to points which had been raised by that speaker. The Rev. Edward Cummings quoted the familiar phrase from "The Mikado," "It is my purpose all sublime to make the punishment fit the crime," and said that it would be much better for the person to-day to make it read, "It is my purpose all divine to make the punishment fit the crime." He then spoke of the necessity for some kind of scheme for retributive justice. He read an abstract from a report on the penal aspects of drunkenness which said that probation may be said to embody the more recent advances in penologic thought and method. One cannot accept the compliments paid to Massachusetts without some qualifications.

We have undertaken important preventive work in the way of substituting training and education and schools for prisons and reformatories; and yet, with all the excellent results already attained, there is

before the State legislature to-day a bill, which has been before it repeatedly, to secure some adequate reasonable treatment for boys between the ages of fifteen and eighteen years. There is not in our civilized community to-day adequate educational or preventive opportunity for saving the souls and characters of the youth between those ages, and every judge in Massachusetts is embarrassed. He does not know what to do with those boys who are brought before him.

While what Dr. Lewis has said about the abolition of the jails does not apply to every jail in Massachusetts, while there are reformatories in Massachusetts which stand well abreast the best in the world, nevertheless it applies absolutely to many a jail and some so-called houses of correction, not very far from where we now stand; and it is literally true that so uncivilized is our method that we are still maintaining such schools for crime, making inevitable the gradual manufacture and graduation of the criminal.

The Rev. Charles G. Ames then spoke for five minutes, referring at first to the work of Dr. Alice Bennett, fifteen years ago, in the State hospital of Pennsylvania, where she introduced the system of education as a curative for insanity. "We must not chain the criminal to the dead body of his crime," she said. "Shut him up with his sin, and you confirm him in his evil tendencies, which are always ready to spring into activity in darkness and bad company. We must help him to forget that he is a criminal. We must not simply remove the convict from evil tendencies: we must bring him in contact with good influences. The possibility of reform is the highest faith of Christendom to-day. We have every reason to do our best toward helping the worst."

J. G. Thorp, president of the Massachusetts Prison Reform Association, confined his statements mostly to figures showing the number of arrests, etc., in the State during the year 1902. "There were arrested in Massachusetts during the past year 95,000 persons. The courts released 62,000 of these. They committed to the prisons 25,000, in round numbers, and released upon probation something like 7,000. Of the 25,000 committed, 15,000 were not committed because the court said that they ought to go to prison, but because they were unable to pay the fine which was levied upon them.

"We have the rather surprising record of committing to prison for the purpose of punishment something like 10,000, while we have released on probation about 7,000 during the past year. Of these 7,000, 82 per cent. lived up to the rules of their probation. The other 18 per cent. were rearrested and committed to prison. The court had the same hold upon them as at first. This was the record last year, although the probation system we have in this State is not adequately used.

"There is no reason why 20,000 instead of 7,000 should not have been released on probation. The cost of the 7,000 who were released on probation, if they had been sentenced to jail, would have been nearly $60,000. The cost of caring for them while on probation was but $30,000. Our system of fines is atrocious. It gives imprisonment to the man who cannot pay his fine, while it allows the man who can pay it to go free. There

is also the greater injustice of getting the money to pay the fine, not out of the man, the guilty person, but out of the sister or mother who can ill afford it and who has had no connection with the crime. That system has been greatly modified by our probation law. The law in this State allows the court, when it finds that a man cannot pay the fine it imposes, to be put under the care of the probation officer until he can earn it, or can pay it in instalments, instead of going to prison and working it out there."

3. PUBLIC ACCOUNTABILITY OF PRIVATE CORPORATIONS: AN INTRODUCTORY CHAPTER.

BY HARRY A. GARFIELD, ESQ., OF CLEVELAND, OHIO.

[Read Friday evening, May 15.]

In the brief time allowed for the presentation of the subject allotted to me, I am impressed with the impossibility of fully elaborating a theory, even if that were possible at this time. I have therefore confined myself to an examination and review of the development of thought in England and the United States concerning private corporations and the influence of certain fundamental conceptions upon accountability proposed as a remedy for some of the existing evils of corporate activity.

One of the striking characteristics of the Anglo-Saxon is his passion for fair play. This instinctive sense may be traced in all the great movements which have marked the growth of popular government in England and America, from Magna Charta to the present day. Opposition to advantage secured by force, special privilege, or monopoly, appeals as naturally to men of Anglo-Saxon origin as cunning to the Oriental; and it is based upon the conception of man as an individual endowed by his Creator with powers differing in degree, but always, in the normal man, similar in kind to those possessed by other men. We accept as indisputable the right of every man to exercise his powers freely and to their fullest extent, limited only by the right of other men to exercise their powers with like freedom. Life, liberty, and the pursuit of happiness are conceived to be incident to the existence of man the individual, not men in the aggregate. From the beginning of commercial development we have opposed persistently and aggressively every attempt to intrench the few to the disadvantage of the many.

But self-preservation is equally instinctive. Indeed, it emphasizes individuality, and asserts the right of each member of society to freedom of action. Over-developed, it easily and naturally becomes predatory. Hence arises a conflict. The stronger thrust aside the weaker. Combinations of forces for

offensive and defensive purposes follow; and, without the restraining influence of respect for the rights of others, tyranny or anarchy would prevail. The conflict will always exist, manifesting itself in one form or another. In one age the conflict is by force of arms; in another, by the more peaceable but possibly equally destructive methods of commercial warfare or strife between interests and classes. To hope for a permanent adjustment of the differences producing the conflict is chimerical, although each generation may secure and, for a time at least, preserve a balance of advantages more or less just, the degree of justice depending upon the character of the men composing the various classes and representing the conflicting interests. In other words, no theory of government or economics will be finally acceptable to a people hating tyranny which fails to take into account the individual man, because the strength of the entire body of citizens depends primarily and always upon the virility and freedom of the individuals composing the whole. Consequently, it is of first importance that nothing be permitted long to exist which saps the manhood of a nation, and that those institutions which invigorate and inspire men to higher attainment be wisely fostered. How best to guard against the one and secure the other is the problem, and it has occupied the attention of men of affairs as well as students for many generations.

Public control or, to mark a distinction which I think should be observed, public accountability of private corporations, is at present one of the plans proposed. Its most strenuous advocates are to be found among the opponents of State socialism, the two standing together against combinations of capital amounting to monopoly, but divided in their conception of what constitutes a monopoly and of the proper relation of other combinations with the public. The advocate of public accountability, which is of Anglo-Saxon parentage, bases his argument upon freedom of the individual. State socialism, the natural successor of paternalism, is of European origin. It would sink the individual in the State, and soon deprive him, unintentionally perhaps, of the power of initiative. The municipalization of private utilities in England during the past quarter of a century was an importation from across the channel, the imported article being transformed to suit the English case.

In order to weigh the value of public accountability as a remedy against ruinous encroachment by corporate enterprise upon the field of private and personal endeavor, it is manifestly important to know something of previous efforts, and to understand, if possible, the reasons why they have failed in whole or in part.

The English trade guilds were formed as if in blind opposition to the theory of unlimited competition not then developed. Combination was resorted to through partnerships to effect results deemed impossible or less easily accomplished by the unaided exertion of the individual. The common law courts always recognized the necessity for this departure, and early developed the familiar rules governing the relations between partners and between partnerships and the public. And because, as the spirit of enterprise grew, some undertakings exceeded the scope of these simple combinations, the right of the crown to grant charters of incorporation to bodies of men was recognized. This prerogative, however, vested in the crown no power to attach liability to the individual members of the corporation; and its members were, therefore, originally under no liability for the debts of the corporation. The East India Company, incorporated by Queen Elizabeth in 1600, and the Bank of England, incorporated in 1674, are early instances in which the British crown exercised the power. These corporations were, by virtue of the crown's grant, given power to deal with their property, to bind themselves by contract, and to do all such acts as an ordinary person could do. Indeed, their corporate capacity was unrestricted. What must have been the popular impression concerning these legal persons, brought into existence by sovereign act, endowed with unrestricted powers and perpetual life? Clearly, that they were invincible opponents and competitors; that against them, existing in any considerable number and engaged in enterprises within the reach of natural born men, the latter stood no least chance of success. Undoubtedly, because of the anomalous character of these combinations, and appreciating the spirit of the people, the crown has always been reluctant to grant charters; and in all cases there has been present as a reason for their existence some direct advantage to the government, usually in the form of revenue returns to the public

treasury. But private interest outweighing public advantage, and the crown hesitating to grant, Parliament was appealed to; and, beginning with about the year 1759, special charters by act of Parliament made their appearance, reaching the stage of rapid development with the construction of railways in England. These corporations were not, like those created by the crown, endowed with unrestricted powers, the overbalancing private interest to be subserved undoubtedly accounting in part at least for the distinction made. They were limited by the terms of their charters, and the courts finally settled down upon the rule that a corporation, created by act of Parliament for a special purpose, could not devote any part of its funds to objects unauthorized by the terms of its incorporation, however desirable such application might be.*

Here, then, we perceive an attempt to limit the power of the deathless competitors. But the attitude of the public mind is still better illustrated by the struggle for existence of the unincorporated company, the so-called joint-stock company.

The common law, certainly prior to 1719, recognized only two forms of combination; namely, partnerships and corporations, the latter created by grant of the crown or by special act of Parliament. But crown grants, for the reasons already stated, were difficult to obtain, and special grants of Parliament were expensive. Consequently, promoters of enterprises sought by contract to form associations which should have continuous existence and limited liability. An agreement was entered into by the participants providing for transmissible and transferable shares, management by a few, the use of a company name, and generally for most of the powers exercised by corporations. In many respects these unincorporated joint-stock companies resembled the syndicate of the present day, and, like the syndicate, arose out of the desire of capital to secure for itself advantages not easily obtained by resort to well-recognized forms of combination. The courts frowned upon them, holding that, so far at least as the public was concerned, the members were no more than partners, each being the agent of the others, and each liable to the fullest extent for the debts of the company.

* Lord Cranford, in *Hawkes Eastern v. Counties R. Co.*, 5 H. L. C. 331.

The chief reason urged against joint-stock companies during the eighteenth century was that the contracts upon which they were based undertook to free the members of the company from liability for the company debts, and encouraged speculation. The public could not dismiss from mind the notion that merchants dealing with companies sold goods on the strength of the credit of the individual members, and to permit those members to limit their liability by disposing of part of their shares or to cancel it altogether by selling all their holdings in the debtor company was looked upon as a fraud on the creditor.

Whatever may be said of the fertility of the human intellect, it is undeniably true that among the people at large new conceptions of familiar things displace old ones with difficulty and slowly. The liability of every partner to pay the last penny of the partnership debt had laid strong hold on the popular mind. The strict enforcement of this liability was conceived to be a just requirement, beneficial to creditors and exacted in return for the advantage permitted to combinations of individuals acting without special permission of the crown or Parliament. Consequently, when in 1719 a clamor arose over the outrages perpetrated upon the public by the promotion of innumerable enterprises, many of them fraudulent and others wholly without merit, and all launched under the convenient form of unincorporated joint-stock companies, Parliament passed the famous "Bubble Act," laying severe penalties on all who presumed to act as bodies corporate, issuing transferable shares of stock, on the ground, as stated in the act, that companies so formed were dangerous and mischievous, and tended to the grievance of the subjects of the realm. It is possibly true, as pointed out by Mr. S. C. T. Dodd, that the "Bubble Act" was passed to protect the monopoly granted to the South Sea Company against competition by voluntary associations, and that the struggle against monopoly was a struggle for freedom of association of persons and capital against laws that impeded that freedom. But it is certainly true that up to that time the courts invariably based their oppositions to these voluntary associations on the ground that they attempted to shield their members from liability as partners rather than because of any well-defined conception

of the distinction between combinations advantageous to the commonwealth and monopolies. As late as 1808, eighty-seven years after the passage of the act, and long after the South Sea Company had ended its disastrous career, it was held* that a company with transferable shares, based upon a prospectus which declared that no person could be held accountable beyond the amount of the shares for which he should subscribe, was illegal, on the ground that this was a mischievous delusion, calculated to ensnare an unwary public.

Gradually, however, and as the people became more familiar with this form of combination, the unincorporated joint-stock company came into favor; for it possessed merits undeniably superior, for large undertakings, to the unlimited partnership. British trade and commerce bounded forward under the expansive power of these voluntary associations. Tradesmen began to look to a new source of credit, to the merit of the enterprise, to the strength of the company, rather than to the financial strength of its members; and at last the unincorporated company, conducting a lawful business in a lawful manner, except in respect to the ever doubtful transferable share and limited liability feature, was accepted with toleration by the courts.† The obsolete "Bubble Act" was repealed in 1825. The long struggle against limited liability was over; and before the middle of the nineteenth century Parliament provided for the registration and regulation of the discredited unincorporated company, which was, as Palmer says in his Company Law, "the lineal ancestor of the ordinary company under the Act of 1862."

I have ventured to review at some length the evolution of the English company, because it seems to me that we are making difficulties of much the same thing which seemed to have been objectionable to the students of commercial enterprises during the last two centuries, but which in the light of later experience disappeared or were transformed into situations easily controlled by law. The continuous existence of the joint-stock company, the freedom of stockholders from liability for debts of the company by means of transferable shares, were assumed to be objectionable and against public

* *Rex* v. *Dodd*, 9 East, 516. † *Rex* v. *Webb*, 14 East, 406.

policy; and the remedy relied upon was to declare illegal all combinations except those existing by virtue of crown grants or special act of Parliament. Unfortunately for the advocate of legal restraint as sufficient remedy, this included not only joint-stock companies, but also labor unions, and all other forms of voluntary association. The truth is that the remedy was wrong. It was wrong in part because the assumption was not justified by the facts, and in part because restraining acts cannot permanently block the will of the majority. Not all voluntary associations were objectionable. The non-trading mutual associations organized for the protection of their members certainly were not, so long as they confined their activities to mutual protection; and the honestly promoted, well-managed, profit-sharing companies proved themselves advantageous to all classes.

Viewed from the standpoint of the present, it is easy to perceive that law levelled against the existence of voluntary associations was unjust, because it denied to men the right to combine for laudable purposes, and futile, because in the end men perceived that by means of these associations a larger sphere of action could be secured to the individual, both to those directly and indirectly concerned; and, this being comprehended, the law was forced to give way. But a new phase was developed when trading companies came into the field in considerable numbers. So large a proportion of trade and commerce was now conducted by companies, the smaller business enterprises only being carried on by partnerships, that those who formerly had fought together for existence now became competitors. The rules applicable to competition between individuals no longer fully met the case. The greatly enlarged resources of the company as compared with the financial strength of the individual made it possible, for example, greatly to prolong an unprofitable commercial war. But the economists, becoming enamoured of competition, substituted it for the restrictive law of the earlier date, and advocated complete reliance upon it as a protection to society as well as sufficient for the contending forces. As between individuals, free and unlimited competition was, on the whole, productive of advantage. All stood on an equal footing. A sentient, knowable personality, instinct with conscience, was always the

responsible competitor. The span of natural life, the ability to work, the amount of available capital possible to accumulate and coming under the control of a single man,—these, and many other factors which will readily occur to the mind, were reducible to averages from which the great majority of individuals, prior to the establishment of the joint-stock company principle, did not depart to any great extent. With corporations, however, the conditions are vastly different. Persons they are, in the eyes of the law, vitalized by the hand and brain of men, but intangible as the blue of the heavens. We may visit their offices, speak with their representatives, deal with their assets, but they, the corporations, are forever invisible, unknowable, insensate; and, because conscience is an attribute of the human being that cannot be transferred or loaned or made available to another, the corporations created and permitted to exist for the convenience of private enterprise, soulless in very fact, must by necessity be subject to other and different rules than those applicable to the individual. Consequently, granting the effectiveness of competition as a sufficient regulator of the affairs of individual traders or partnerships, it soon became apparent that in the conflict between corporations it was productive of wastefulness, and often proved the destruction of the very situation it would relieve.

But, if the laws of competition prove ineffectual against the encroachments of corporate enterprise on individual freedom, and if we are to accept as final the verdict against governmental interference by restrictive legislation, are we not fast approaching a condition to which the proposals of the socialist will apply? I think not. Sir John Barnard Byles, better known as the author of "A Treatise on Bills of Exchange," says, in a little book entitled "Sophisms of Free Trade":—

> "But the practical man sees that the objections of the socialists to that wild and unregulated competition which the free-traders introduced are no objections at all to a competition duly regulated. Competition, like the great physical forces of nature, is, when left to itself, destructive and devastating; but, guided and restrained by human art, it is an instrument of human happiness as mighty, but as harmless and docile, as the steam-engine itself."

Competition, duly regulated! Is this not a way out of the dilemma? But how regulated? What shall the regulations contain? The public mind has gradually but surely worked around to the conception of the corporation as accountable to the power which gave it birth. Human beings, although free agents, and hence regarded as of right possessed of all liberties not expressly denied to them, for the protection of others, are, nevertheless, accountable to their Creator. The reasoning concerning the body corporate once recognized as a person, and possessing certain liberties conferred by its creator, the State, follows in the same line. So long as corporations were under suspicion and merely tolerated, the attempt to restrict them by ruinous and unjust provisions of law were favorably received by the majority of the people. But, corporate enterprise finding favor, restrictive legislation has in recent years been limited to those provisions only which are calculated to prevent the formation of the new combination, the trust, which now bears the brunt of the eternal conflict waged against the forces threatening destruction to individual freedom. And, as formerly the distinction between worthy and unworthy companies passed unnoticed, so now the distinction between the new form of combination, which does in fact menace our liberties, and the combination which furthers progress and opens wider the door of opportunity to the individual, is unobserved.

No clearer exposition has ever been made of the limits of the province of government than by John Stuart Mill. His luminous reasoning sheds a light by which many of the problems of to-day are as clearly revealed as those of his own time. He says:—

"We must set out by distinguishing between two kinds of intervention by the government, which, though they may relate to the same subject, differ widely in their nature and effects, and require for their justification motives of a very different degree of urgency. The intervention may extend to controlling the free agency of individuals. . . . This is the *authoritative* intervention of government. There is another kind of intervention which is not authoritative, when a government, instead of issuing a command and enforcing it by penalties, adopts the course so seldom resorted to by governments, and of which such important use might be made, that of giving advice and promulgating information."

Further, and as the strongest reason against the extension of government agency, Mill says:—

"Even if government could comprehend within itself in each department all the most eminent intellectual capacity and active talent of the nation, it would not be the less desirable that the conduct of a large portion of the affairs of society should be left in the hands of the person immediately interested in them. The business life is an essential part of the practical education of a people. . . . A people among whom there is no habit of spontaneous action for a collective interest, who look habitually to their government to command or prompt them in all matters of joint concern, who expect to have everything done for them except what can be made of mere habit and routine, have their faculties only half developed. Their education is defective in one of its most important branches. . . . The only security against political slavery is the check maintained over governors by the diffusion of intelligence, activity, and public spirit among the governed."

Here, then, is the argument against socialism as a weapon of offence against the trusts, and at the same time a statement of the character and degree of government intervention necessary to convert this most formidable of combinations yet attempted into an entirely advantageous instrumentality for the advancement of men. I do not mean to indicate that all combinations can be so converted; but at least we can pursue a course which will qualify us to sit in judgment upon those worthy of condemnation, and prepare the way for such degree and kind of government intervention as shall wisely regulate combinations of capital, while at the same time preserving individual freedom.

To hold private corporations strictly accountable to the public, through the agency of government, for the proper exercise of the powers granted to them, is predicated upon the right of government to know that its laws are being respected; and to insist upon a due and regular accounting of the trusts committed to the various corporations is the best and surest means of preventing the growth of monopolies, and of revealing to both the governors and the governed the faultiness of any part of the legal regulations in force.

The value of publicity, which, of course, is not the same thing as accountability, has been long appreciated in Eng-

land. The Companies Act of 1862 makes provision for the registration of all members of a corporation, their names, addresses, and number of shares held being always obtainable by the stockholders, and, on the payment of a small fee, by any other person, while a rigid audit of the accounts of the company is usually required. The publicity given to reports of the United States Steel Corporation has done much to popularize the idea in this country, and the law creating the Department of Commerce and Labor has provided machinery for developing a system applicable to all interstate and foreign trading companies.

Prior to the development of the trust idea the popular conception in the United States of a private corporation was that it was merely a convenient method available for the conduct of private business. The suggestion that the public had any rights in the premises other or different than those existing in the case of individuals shocked the business sense of privacy. The few requirements of the law as to annual reports seemed to exist without reason or justice. Gradually, however, the popular conception changed with changing conditions until now scarce any will be found to question the right of the public to a certain measure of control over public service corporations. It is well understood that there are always three parties in interest,—the owners, the creditors, and the public. But the public is also, though less directly, affected by the activities of purely private corporations; and no sufficient reason can be urged against holding every corporation, whether engaged in public or in private business, responsible for violations of its charter privileges, as well as for performance of its duties. How can this responsibility be enforced without full information concerning existing conditions? To grant the existence of responsibility imports accountability. To insist upon public control may be construed to mean control amounting to tyranny and confiscation, but accountability requires nothing beyond a full and fair statement of facts. That the facts may be damaging to the enterprise is not sufficient argument against accountability, because, if secrecy is necessary to protect an enterprise from fair competition, it by no means follows—indeed, it ought not to be permitted—that government be used as a shield.

The protection afforded to inventors depends upon a different principle, and therefore is properly excluded from the category of protected enterprises in the sense here intended.

As stated by Mr. Bird S. Coler, in his plan for the regulation of trusts:—

"Business that requires secrecy of management and manipulation of securities is not entitled to the protection of the State, and should be refused corporate powers."

It is beyond the scope of this paper to discuss the principles involved in the merger case now pending. Indeed, the contention there presented is too fresh in the public mind to require exposition. But I would include this form of combination with the more direct form of one large corporation which has absorbed the constituent elements and destroyed their legal identity. Accountability of corporations for the administration of their affairs to the creating power should be incident to the existence of all corporations. Full knowledge of the financial condition, method of conducting business, and profits secured, is a necessary prerequisite to government intervention in any department of trade or commerce. Without it, it is impossible to decide whether any given combination is detrimental to public welfare. The right of individuals to full and free exercise of their powers, whether acting alone or in concert with others, as partners or by the more convenient form of incorporated companies, admits of only such degree of control by the State as shall secure to others a like privilege. Step beyond this limit, and we abandon free government and inaugurate a system of paternalism foreign to our people and destructive of individual freedom.

IV. DEPARTMENT OF EDUCATION AND ART.

1. THE FINE ARTS AS AN ETHICAL FACTOR IN COMMUNITY LIFE.

BY HENRY TURNER BAILEY, DIRECTOR OF ART IN MASSACHUSETTS PUBLIC SCHOOLS.

[Read Saturday morning, May 16.]

To assume that there is any relation whatever between the fine arts and ethics, morality, or religion, has always appeared to some minds an absurdity. When Greek art was at its best, Greece was a nation of slaves sunk in gross Paganism; the marble magnificence of the Rome of Augustus covered a pit of iniquity; the time of the Renaissance in Italy was the time of the Borgias; Paris, the most beautiful city in the world, is the most corrupt, they say. The biography of artists tells the same tale. The brilliant poets, painters, sculptors, have often been unscrupulous, profligate, worthless as citizens.

But such an interpretation of history and biography seems to me superficial. A closer reading of the facts leads to the conclusion that all great art has been born of worship, and all the masterpieces of genius of love. The worship may have been misdirected, the object of love may have been unworthy, but worship and love have been and ever will be at the heart of all human achievement. If moral deformity has accompanied genius, we must accept the fact, remembering, however, that, when any one power is abnormally developed, the other powers suffer. A function favored attains great sway, while others through disuse become atrophied. Our aim in education is wholeness, completeness, symmetry of character. In the attainment of perfection we cannot neglect the fine arts if we would. Teachers know already certain highly significant facts bearing upon the relation of the arts to human conduct. Beautiful school buildings, beautiful school-rooms, and beautiful furniture have practically eliminated Vandalism in public schools. Teachers know that works of art influence conduct and transform the spirit of children.

The programme this morning deals with what Hegel calls "The Realm of the Beautiful." Music is beauty expressed through sound. The stage, at its best, deals with beauty as expressed through human action. The fine arts have to do with beauty as expressed through static forms and colors. The true topic of the morning is "Beauty as an Influence in Life."

The study of beauty as embodied in fine art begins in the kindergarten, is continued through all grades of schools by drawing, coloring, and making, and study of masterpieces, is pursued still further in high schools, day and evening art schools, and in the universities. Museums and public parks—pictures in three dimensions by landscape architects—contribute something, and the practice of photography as a pastime is not without its value as an introduction to the study of beauty. Illustrated books and magazines, exhibitions, world's fairs, are all stimuli to be reckoned with in any serious study of the scope of education in the fine arts. The immediate question is, What relation has all this exploration of fine art to ethics, the science of human duties?

The complex human relationships with which ethics have to do have been reduced to one by the philosophers, and presented to us by Emerson in his poem "Each and All." The one all-inclusive relationship is expressed by the phrase "Each for All and All for Each"; and the ideal which all of us who teach must hold ever before us, the ideal for us all as participants in the community life is, Each at his best, for the good of All.

The study and practice of fine art helps towards the realization of this ideal in three ways:—

1. *By Opening the Mind and Heart.*—Everywhere are people as blind as bats and as narrow as moles. The ascending of the morning means nothing to them but a call to the daily grind. They hear the noise of the birds, but no music: not one of the little songsters is known to them by name. They never lift their eyes to the sky except to know about taking an umbrella. The cloud chariots, the flocks of Apollo, the wings of the seraphim in the upper deeps, the visions of lands beyond the morning star, are nothing to them. The modest grasses decked in jewels they merely avoid as being wet. The

companies of gladsome flowers brightening the earth with color, filling the air with fragrance, wooing children to laughter and song, they see not and know not. The sweep of the open landscape, the reach of the sea, alive with quivering air, and pulsing breezes, and sailing cloud shadows; the cool glooms of the forest at noon, the deepening shades of the upland pastures at sunset, the coming forth of the stars from their secret chambers,—all these splendid shows are lost upon them. In the realm of the arts they are equally bovine. They cannot tell one tune from another. They do not know a Turner from a Teniers, or a Botticelli from a Burne-Jones. They pass and repass the venerable ornament exquisitely cut upon the porch of a Colonial house, and know nothing of its presence, much less of its eventful history. They sit on Sunday in a church where the sacred symbols first scratched with trembling hands on martyrs' graves blaze forth their messages from glowing windows, or whisper them from the font and table and altar, but, having eyes, they see not, and, having ears, they hear not. Nature is to them a dim blur of things: the great world of art is to them a nonentity. A Latin grammar, a Greek text, an algebra, a mill sheet, a financial report, or perchance a flock of hens, is the measure of their horizon, and the arc of their sky. To a man submerged in business, entombed in a shop, buried in a book, or lost in himself, the practice of the ethical virtues is impossible.

The study of beauty as it is now pursued in our schools opens the soul to nature and to art in all its forms, awakening that response, that appreciation, that sympathy with everything, with every kind of craft, with every workman, which is a characteristic of ethical holiness. An open soul is the prepared field for the growth of the ethical virtues.

2. *By Increasing Individual Efficiency.*—In our towns and cities are men and women so near zero in personal power that normal ethical relations between them and the rest of the community are practically impossible. To be self-respecting, to be independent, to enter heartily and harmoniously into the life of the community, a man must count as one. Anything which tends to raise the potential in individuals becomes an ethical factor. The study and practice of fine art tends to promote individual efficiency in two ways: directly, by fur-

nishing ideals, and giving skill of hand in realizing those ideals; and, indirectly, by revealing fascinating fields of research, endless vistas of ever-increasing pleasure, to those whose fate it may be to tend a machine or to perform the monotonous labor involved in any one of the ten thousand soul-deadening occupations of the modern industrial and commercial world. The fate of thousands upon thousands of toilers depends upon how they spend their few moments a day of leisure. If they spend them in vicious ways, degeneration is sure. If through the study of beauty they come to have an interest in any one of the modes of beauty (in drawing, painting, designing, coloring, in wood-working, metal-working, thread-working, in photography, picture study, any branch of historic art or modern craft), and if to this the spirit turns during the few moments of leisure, then growth, increasing power, appreciating values in living, are inevitable. This enriched personality becomes the efficient agent in all ethical virtues.

3. *By Developing Taste.*—The study of beauty, familiarity with beautiful things, knowledge of the principles of beauty, will develop taste in the individual. Good taste will make for itself a home where order and peace and loveliness reign, a home where strength for the game of life may be redoubled daily, a home from which, no matter how humble, the spirit of peace on earth and good will to men will irradiate forever. Good taste will be thoughtful of the neighbor, it will give us costumes and other equipage void of offence. It will reveal the limits of personal freedom and the bounds of social control. Good taste is the regulative principle in all ethical virtues.

As a means of opening the mind and heart, thus preparing the way for ethical righteousness, as a means of promoting individual worth, thus developing the units of the ethical community, as a means of perfecting taste, thus sensitizing the ethical conscience, the study and practice of the fine arts stands second only to religion in importance as an ethical factor in community life. Literature, music, and the drama come afterwards.

We may rest assured that in the long run the truth of Emerson's affirmation as to beauty will prove true.

> "All that's good and great with thee
> Works in close conspiracy."

2. GOVERNMENT SHOULD NEITHER ENDOW NOR CENSOR AMUSEMENTS.

In the absence of Mr. Heinrich Conreid, director of the Metropolitan Opera House, New York, who was expected to read a paper on "The Stage," his place was filled by Hon. St. Clair McKelway, of the Brooklyn *Eagle*, who delivered the following address on the "Endowed Theatre":—

When Mr. Dutton asked me to take Mr. Conreid's place, the instinct of retort, which is the very mainspring of journalism, led me to think, "I can no more take his place on the subject of the theatre than he could take my place in a suit of clothes." I, however, did not say that to Mr. Dutton, for I thought it would shock him. I also thought that I would better reserve the remark for this platform, where he could share the shock with others. In that purpose policy and altruism met together, and surprise and unselfishness kissed one another.

Besides, the idea of taking his place here impliedly involved the duty or the attempt to express his ideas. I could not do that; for I did not surely know what his ideas were, and, if I did, the attempt to express them might result in a grotesque misfit. His ideas might get lost in the labyrinths of my vocabulary, or my language might suffer under the impact of his ideas. A poor thing, but my own, was Touchstone's plea in mitigation of damages when he put Audrey as an exhibit before the duke and others in the forest of Arden.

You must therefore content yourselves with my own views on the subject of the theatre, and I promise you shall have them—the very moment I find out what they are. Now it is not easy for one to find out exactly what one's real, own, and only ideas are in Boston just now, for Boston, which, some one said, "is not a city, but a state of mind," has lately become, not a fountain or factory of ideas, but an understudy of Emerson. I have learned more about Emerson since I came here than about Mr. Conreid. I shall not tell you what I think about Emerson, for that would be a work of supererogation. I need not ask you what you think about Emerson,

for you all tell me without asking. I am content to know two things: One is that Emerson is universally well thought of by Boston—a hundred years after he was born. The other is that at least one hundred years would be required for Boston to think well of me if I thought ill of Emerson. I shall not risk contemporary safety or challenge the mercy of posterity by any such course.

Talking about Emerson reminds me of Mr. Conreid,—because they are so different. Mr. Conreid, as I learn, favors an endowed theatre. Emerson, were he here to-day, would insist that we have already an endowed theatre, indeed several of them. If pushed to tell where they were, he would name the Capitol at Washington, and he could even point to the State House, with the golden dome, where the play of "What became of the Thousand Dollars?" is now undergoing a continuous performance. He would also be apt to regard our city halls as the homes of vaudeville, our mayors as managers of the show, and the poor people as the unconscious claque or critics, according as they belong to the ins or the outs.

And this brings me to say that, if we have a State-endowed theatre, it must be endowed either by the national government, the federal State, or by the separate Commonwealths of the Union. We may well inquire, "Has the federal government done its ordinary work so well that we are prepared to let it take on the theatre business in addition to what it already has on its hands?" or, "Do our State governments act so well their parts that we can safely let them prescribe the standard of histrionic art to us, and make us pay for the same out of our taxes?"

I take it we will have to wait awhile before we say "yes" to either question. I would not bring up subjects which divide our opinions into discussion here, but we are all agreed that our governments do not yet set the standards for us in the things which they are charged with doing by law. The standards of debate are not set by our Congress or legislatures. They are supplied by our cultivated citizens in voluntary associations. The standards of economics are not expressed in our legislation. Our legislation escapes being a calamity in proportion as outside bodies of experts and scholars can force on that legislation a dim realization of or a bald-headed con-

formity to correct economic standards. Standards of fitness and efficiency for public service are forced on government, not by love, but by fear of the friends of the merit system, who annually play a stiff game of moral bluff on the apprehension of political parties by threatening to vote them out of power if they dare to reinstate the spoils system. The pulpit, the independent press, and the mugwumps ethically bulldoze the politicians at every point at which rule is affected by a relation to moral interests. Till our official class do not have to be forced to recognize correct political and economic and service standards, forced to recognize them even partially and reluctantly by external pressure, we should hesitate to ask them to make themselves either the masters or the censors of our dramatic *pabulum*.

Besides, it is possible to devolve too much on government and to leave too little to private or local initiative. We have already made the precedent of sending labor unions to the White House, which was the logical consequence of letting Wall Street run to the Secretary of the Treasury every time it gets into a tight spot. The courts, with more firmness than kindness, are telling our railroads in the interstate commerce act that they shall not compete at all, and in the Northern Securities case that they must compete and must cease from a policy to supersede throat-cutting with concord. Our good friend, Mr. John Graham Brooks, has discovered that the labor unions intend to take entire charge of the business of the wage-earners and quite one-half charge of the business of wage-payers. We are living, we are moving, in a grand and awful time; and before long the walking delegate will be a jumping Jupiter, from whom the inexcusable capitalist will have to get annual permit to live, which must be periodically viséd by the Civic Federation, as the guardian of sanity, security, and sanctification to employers and as the temperer of the omnipotence of the confederated employees.

I am combating none of these things. I have obtained my permit to live. I am willing to have it countersigned by Mr. Straus and Senator Hanna, and to take my chances on it from Grover Cleveland or Theodore Roosevelt or Richard Olney or W. J. Bryan, or any other President of the uncertain future. But I am not in a hurry to farm out to government

the provision, or the supervision, or the super-provision of my play goings. The syndicate or the Independent Booking Company suffice for that now. They take my money, and I make my choice.

If we are to have an endowed theatre, let us have it endowed by private capital. When billionaires are getting to be as plenty as blackberries, some of them must have mysteriously got possession of some of my money. I have not formed any purpose of going on a strike for it, but any of these billionaires is at liberty to employ any portion of his fortune in endowing a theatre anywhere he pleases. And if, after having endowed it, he has the sense to employ Mr. Conreid to man it and to manage it, so much the better. I shall not try to obtain a stockholder's ticket, but will cheerfully pay my way in as a form of tribute due from me to represent my interest on my share of the billionaire's fortune. Too many men who are "worth millions" are not worth much of anything else. If they wish to make restitution to me and to others in the form of endowed theatres, all right. Only they must be sure to employ geniuses in its management, who, in turn, can employ artists, authors, wits, and men of sentiment, not affected by a relation to commercialism, for the sake of commercialism, in the interpretation or provision of entertainment for the endowed theatre.

About all that the endowed theatre can do for the theatrical profession is to insure that the ghost shall walk with exemplary regularity. That will deliver the manager from the fear of a deficit. It will save the actor from the need of counting the railroad ties, on his long walk from the rural scene of ruin back to the Rialto of opportunity or of possibility, in wait for the expectant angel. The millionaires can disgorge endowments for theatres and can deliver those who are benefited thereby from the pains of impecuniosity. The millionaires may also in that way create in human breasts a disposition to condone them, but they can do little more—on the theatrical line. Money cannot monitor or muzzle mirth. It cannot dominate or dictate sentiment. It cannot temper tragedy. It cannot capitalize comedy. It cannot placate the pit or gild with gold the grin of the gallery that won't come off, and that will insist, as it pleases, on changing the grin to guffaws or to groans, according to its mood.

For the present, my friends, let us remit endowed amusements to the managers and to the millionaires. The former, if they are shrewd, can convince the latter, if they are an easy mark, that in endowed theatres they can secrete—or flaunt—an unneeded surplus with safety and with a fair measure of popularity and of gratitude. But let us keep our governments out of more than the matter of tragedy and of comedy than that in which they are already engaged. Enough of their business is already a tragedy of honor. Too much of it is already a comedy of errors. Awhile ago some of it involved a failure in the play of "A New Way to pay Old Debts." The nation preferred the old way of paying them. There are bills on the boards which have yet to be played—or played out. "The Trusts," "The Comedy of Revision, with Revision left out," the melodrama of "Benevolent Assimilation," the tragedy of "Unionization of Every Other Man's Rights," the problem play of "The Hero or the Scab," are all entered for the ensuing season. They bid fair to last for several seasons. I hope they will be well played, and that each of us will bear well our several parts, but I do not believe that the government should be solicited to take a hand in them, because they enter into the question of what our government itself shall be, shall mean, and shall comprise; and we should reserve the determination of that for ourselves. The old republics that furnished free entertainments for their peoples placated and pampered them for a while, but the end of the effort or policy was not a success. It furnished an object-lesson which the greatest, but I hope not the last of the republics, should be swift neither to copy nor to challenge.

3. MUSIC AS AN ETHICAL FACTOR IN COMMUNITY LIFE.

BY FRANK DAMROSCH, OF NEW YORK CITY.

[The editor greatly regrets that only this brief abstract of an extremely suggestive address can be offered.]

Music, as an art, is not primarily devoted to the development of morality. Its mission is, first of all, to give expression to the beautiful, to thoughts of higher things, to spiritual ideals, to the things inexpressible in speech or form or color. Its laws are founded upon æsthetic laws; its medium of expression, be it voice or instrument, seeks to convey its message by virtue of beauty of tone and sincerity of utterance; and it has fulfilled its part, if it has aroused in the hearer an echo of the emotions which called it into being.

Looked upon only as an art, music need accomplish no more, but music, more than any other art, exerts a far broader influence upon human life outside of its purely æsthetic mission.

It will be generally admitted that all art has an ennobling influence. One cannot live with beautiful pictures, statuary, architecture, or other artistic manifestations without being refined and uplifted. But for the ordinary person it is not easy to read the higher messages which those works of art proclaim, because the form in which they are given in a certain degree hides the message.

A painting is a picture of some natural object of familiar things, and it is these which first attract the attention. Most people do not get beyond the power of appreciating the fidelity of reproduction on canvas of those things seen in daily life. To some the mere color effects are pleasing, and they see nothing beyond that which excites their visual perceptions. The real mood and meaning of the painting remains a sealed book to them. And thus it happens that, while everybody likes to look at pictures, only the few get any deeper impressions, while most people are satisfied with evanescent effects.

While, therefore, all the fine arts could and should have a strong influence upon man's spiritual development, the fact that their medium of expression is reproductive of natural objects which veil the higher thought for which they are the vehicle militates against their finding ready ingress into men's deeper currents of thought and feeling and makes them less general factors of ethical culture.

Music, on the other hand, possesses powers of reaching men's souls far more direct and lasting.

As music does not borrow its methods of expression from trees, flowers, hills, rivers, or any other object in nature, but uses its own voice in its own way, it is not necessary to first interpret the spiritual by the material, as in the case of painting or sculpture.

Noble music will kindle noble emotions in the hearer, whether he understands its meaning or not. It appeals directly to the soul, and sets vibrating as many responsive strings as each particular soul has strung. This varies of course according to the degree of culture and receptiveness of the individual; but, with each new appeal, music finds a harp with more strings ready to respond to its touch. And, as men gradually grow to understand and appreciate this tone language which comes from unknown realms, which speaks in words which have no finite meaning and yet express the infinite lore of human emotions and ideals, they are lifted to a higher spiritual plane, their standards of life, thought, and action are raised higher and higher, and their attitude toward life, its duties and aims, becomes nobler and truer.

I do not take the position that a criminal will turn into an honest man after hearing Beethoven's C minor Symphony. I think that the cases are rare in which music has accomplished a rapid moral improvement in any person, but I do believe that the frequent and intimate association with good music refines and ennobles men.

Anything which lifts men to a higher critical plane is of influence upon his life as a whole. While, therefore, music seeks primarily to satisfy its own objects as an art, in creating higher art standards, it also—secondarily—raises the moral standards. The process may briefly be described as follows: music through direct appeals to the emotions creates *right feeling*, this leads

to *right thinking*, and this in turn to *right living*. It is therefore an ethical factor of great importance, all the greater because, unlike the Church and State, its influence is not direct, obvious, and, to a certain extent, restraining, fettering, but indirect, scarcely felt, and therefore not resisted.

A concrete example of this fact on a small scale is the experience we have in our public schools. The most unruly class of boys, eager to break all rules simply because they are rules, and therefore restraints on liberty, will in an instant become white-winged angels of peace when called upon to sing a song. They feel, intuitively, that song is synonymous with order and decorum, their voices are tuned to as gentle sounds as they are capable of uttering, and, paraphrasing the old saying that children are good only when they are asleep, we may say that they are good while they sing.

Good music influences not only children, but all people for good. My experience with the People's Singing Classes has shown me that people crave beautiful music, and that they will embrace any opportunity and make great sacrifices to have it in their lives.

The chorus is the ideal prototype of a democracy. Its members unite for a common purpose, to give expression to a beautiful work of art. Each one subordinates himself for the good of the whole. Each performs his part without encroaching upon the work of his neighbor. Each gives his best, and obeys the directing power which guides the whole. The result is a benefaction to all who participate and to all who come within range of hearing, and the effect is a benediction.

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